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AND

PRACTICAL SUGGESTIONS FOR PERUSING AND ANALYSING ABSTRACTS,

WITH

AN OUTLINE OF THE LAW RELATING TO TITLE TO LAND

AND

Tables of Stamp Duties since 1815.

BY

WILLIAM HENRY GOVER, LL.B. (LOND.),

OF LINCOLN'S INN, BARRISTER-AT-LAW,

AUTHOR OF "THE LAW OF CAPITAL AND INCOME AS BETWEEN LIFE TENANT AND REMAINDERMAN."

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PREFACE

TO THE FIRST EDITION

THE object of this Manual is to furnish suggestions for dealing with the questions usually arising on Abstracts of Title to Freeholds, Copyholds, and Leaseholds, and advising on the title shown thereby.

An outline of the Law relating to Title is given, and as only a forty years' title need now in general be shown, the range of subjects considered has been limited accordingly. Points of practical importance to Purchasers are alone stated, and only the most recent of the reported cases bearing thereon are cited. Registered titles are considered separately.

A method of Tabular Analysis is suggested which gives a comprehensive view of a title and shows at a glance the position of the legal estate and every equitable interest, thus lessening the risk of overlooking any incumbrance, and rendering it easier to resume the thread of the title after interruption.

The evidence usually required for verifying an Abstract is arranged alphabetically, and Tables of the principal Stamp Duties to which deeds relating to land have been subject since 1815 are given in the Appendix.

10, OLD SQUARE, LINCOLN'S INN,
October, 1889.

NOTE TO THE FOURTH EDITION.

IN this Edition the Text has been revised, the changes in devolution at death introduced by the Land Transfer Act, 1897, have been incorporated, and the alterations in searches consequent on the Land Charges Act, 1900, noted. Some Observations on Foreclosure Orders and Friendly Societies have been inserted, the Chapter on Registered Titles has been rewritten having regard to the Act of 1897 and the Land Transfer Rules, 1903, and a Chapter on Compulsory Registration added, while the whole work has been brought up to date.

W. H. G.

10, OLD SQUARE, LINCOLN'S INN,
May, 1905.

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ABBREVIATIONS.

Burton .....Burton's Compendium of the Law of Real Property (8th ed.). 1856.

Cov. .....Coventry's Conveyancer's Evidence. 1832.

Dart .....Dart's Vendors & Purchasers (7th ed.). 1905.

Elph. & Clark...Elphinstone & Clark's Searches. 1889.

Farwell.....Farwell's Powers (2nd ed.). 1893.

Hanson..... ..Hanson's Probate, Legacy & Succession Duties Acts (5th ed.). 1904.

Hawkins .....Hawkins' Construction of Wills. 1863.

Lewin .....Lewin's Law of Trusts (11th ed.). 1904.

Pres. .....Preston's Abstracts of Title (2nd ed.). 1823—4.

Scriv.....Scriven's Law of Copyholds (7th ed.). 1896.

Sug. .....Sugden's Vendors and Purchasers (14th ed.). 1862.

Sug. Pow.....Sugden's Powers (8th ed.). 1861.

Tud. L. C.....Tudor's Leading Cases on Real Property (4th ed.). 1898.

Webster .....Webster's Conditions of Sale (2nd ed.). 1896.

Wms. Ex.....Williams' Law of Executors (10th ed.). 1905.

Wms. R. P. .....Williams' Law of Real Property (19th ed.). 1901.

ADVISING ON TITLE.

CHAPTER I.

PERUSAL OF ABSTRACT AND ANALYSIS.

Abstract.

On the purchase of freeholds, copyholds, or leaseholds, an abstract of title is usually delivered to the purchaser, with the object of showing that the vendor is entitled to the property and has power to convey it.

In the absence of special stipulation, the vendor is bound to deliver an abstract: *Re Pelly & Jacob*, 80 L. T. 45; and if one is not delivered within a reasonable time, the purchaser may rescind: *Compton* v. *Bagley*, (1892) 1 Ch. 313.

If the abstract is perfect, it will deduce the title from the date fixed by the contract or by law for its commencement, and disclose any incumbrances affecting it, setting out the material parts of all deeds, wills, and other documents relating to the title, and stating the facts on which it depends: 1 Pres. 42, 207.

Perusal.

In perusing the abstract on behalf of the purchaser, the conveyancer has to consider:—

(1) Whether the instrument with which it commences is a sufficient root of title;

(2) Whether the title is regularly deduced to the vendor without a break;

(3) Whether the evidence of title is sufficient;

(4) Whether the title shown enables the vendor to perform his contract: see 1 Pres. 208.

Chap. I.

Abstract.

The contract or particulars and conditions of sale should be first read, and a note made of the property purchased, the estate to be conveyed, and the incumbrances (if any) to which the sale is subject: see 3 Pres. 205.

It is a good plan, before perusing the abstract, to glance over it to obtain a general idea as to the nature of the title and the persons through whom it is traced: see Sug. 413.

After each abstracted instrument has been read, its effect should be considered, and an opinion formed as to the change thereby produced in the ownership of the property: see 3 Pres. 183.

It must generally be assumed by the conveyancer that the deeds and documents are correctly abstracted; but where the form or language of the abstract points to an opposite conclusion, the suspected passage should be required to be set out *verbatim*: see 1 Pres. 117.

It is the duty of the purchaser's solicitor to correct any mistakes and supply any omissions in the abstract when he examines it with the original deeds and documents; and the effect of the alterations must then be considered.

The conveyancer has to be constantly on his guard to see that he does not overlook:—

(1) Defects in the form of abstracted instruments;

(2) Defects in the estate expressed to be granted thereby;

(3) Equities or breaches of trust disclosed;

(4) Mortgages or other charges created by owners of the property, whether abstracted or merely referred to;

(5) Succession duty and estate duty;

(6) Insufficient stamps;

(7) Facts requiring proof.

Pencil notes may conveniently be made in the margin of the abstract for calling attention to these matters; and such notes will be found useful in framing requisitions.

Something more, however, is wanted to give a clear idea of the title shown; and to accomplish this object, a tabular analysis of the title in the form shown on page 4 is recommended.

The table is commenced by setting down the name of the owner at the date of the root of title; and each disposition or devolution of the estate is shown by drawing a line down from the name of the last owner and writing the new owner's name underneath.

Where the whole estate is conveyed absolutely, the transaction is denoted by a perpendicular line with the grantee's name at the foot.

Where the grantor does not part with his whole estate, the derivative interest is shown by carrying out the line to the right or left: in the case of a trust or lease, to the right; in the case of a life estate, estate tail, or mortgage, to the left.

Life estates and estates tail are denoted by writing '*for life*' or '*in tail*' under the name of the owner; and terms, by writing the number of years after the termor's name.

It is convenient to note the date of each disposition against the grantee's name, with a reference to the page of the abstract where it is to be found.

When an interest is once created, every subsequent dealing with it must be traced in a similar manner.

The death of a life tenant is shown by writing '*died*' with the date of death underneath his name.

So the surrender of a term is shown by writing '*surrendered*' under the name of the last owner.

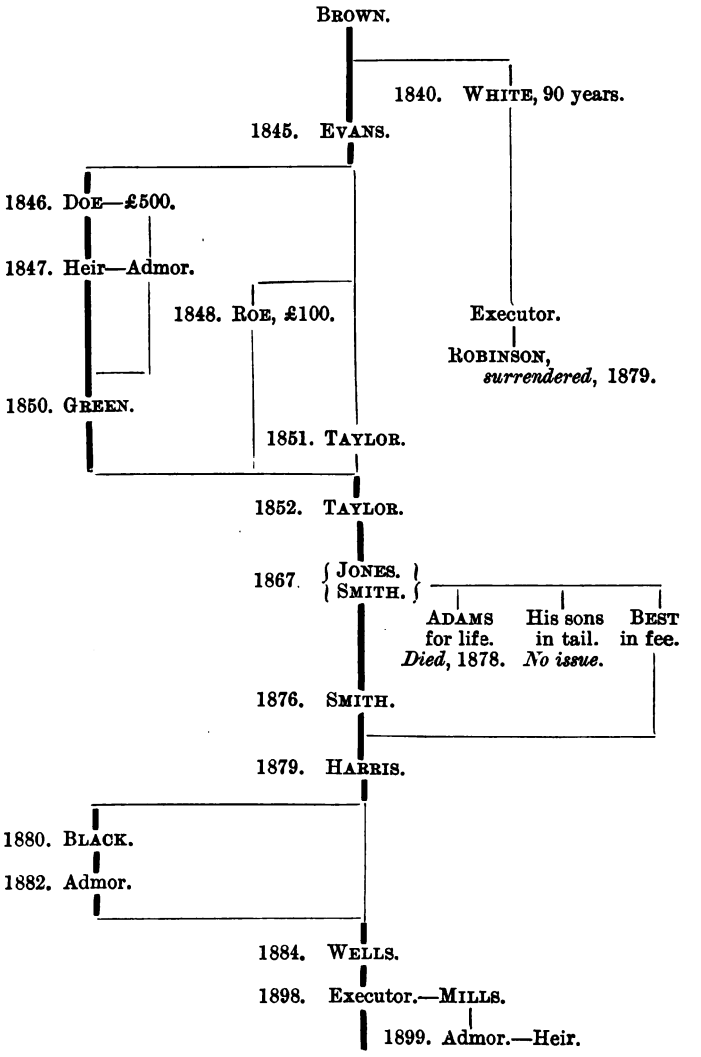
When the legal estate and equitable interest are in different persons, they must be traced separately, a thick line being used to represent the legal estate, and a thin line to represent the equitable interest.

If the right to mortgage-money becomes separated from the estate, its devolution is shown by writing the amount by the side of the mortgagee's name and treating it as a separate interest.

Chap. I.

If the title to different parts of the property is distinct, or if the property is divided into shares, a separate table must be used for each part or share.

Example of tabular analysis:—



The title represented by the above table is as follows:—

Conveyance in fee by Brown to Evans in 1845, subject to a 90 years' lease to White.

First mortgage to Doe in 1846, for £500.

Second mortgage to Roe in 1848, for £100.

Death intestate of Doe in 1847.

Transfer of Doe's mortgage by his heir and administrator to Green in 1850.

Conveyance of the equity of redemption by Evans to Taylor in 1851.

Reconveyance of both mortgages to Taylor in 1852.

Will of Taylor in 1867, devising to Jones and Smith upon trust for Adams for life, and then for his first and other sons in tail, and in default of such issue to convey to Best in fee.

Death of Taylor in 1867.

Death of Jones in 1876.

Death of Adams in 1878, without issue.

Conveyance by Best and Smith to Harris in 1879.

Surrender of the 90 years' term by the assign of White's executor in 1879.

Mortgage to Black in 1880.

Death of Black in 1882, intestate.

Conveyance by Harris and Black's administrator to Wells in 1884.

Will of Wells in 1898, devising to Mills in fee, and appointing an executor.

Death of Wells in 1898.

Death of Mills in 1899, intestate.

For other methods of analysis, see 3 Pres. 9, 202.

CHAPTER II.

COMMENCEMENT OF TITLE.

Chap. II.

THE first point requiring attention in an abstract is the date of the instrument with which it commences.

Commencement of title.

When the contract stipulates that the title shall commence with a specified instrument, however recent, no earlier title can be required: Conv. Act, 1881, s. 3 (3): see Dart, 331.

Where there is no stipulation on the point, the abstract should commence as follows:—

Freeholds and copyholds.

In the case of freeholds or copyholds, the first abstracted instrument should be at least 40 years old: see V. & P. Act, 1874, s. 1; *Re Cox & Neve*, (1891) 2 Ch. 118. In one case, where the abstract began with a conveyance 24 years old, which recited that the grantor was seised in fee, V.-C. Malins was of opinion that the recital was sufficient evidence, under s. 2 of the V. & P. Act, 1874, and that a 40 years' title could not be required: *Bolton* v. *L. S. Bd.*, 7 Ch. D. 766, *sed qu.*

If a possessory title is relied on, it must be shown for 40 years: *Jacobs* v. *Revell*, (1900) 2 Ch. 858; and see *post*, p. 160.

Enfranchised copyholds.

In the case of enfranchised copyholds, both the freehold and copyhold title have to be shown: Sug. 372. The copyhold title should commence with an instrument 40 years old; but it is sufficient for the freehold title to commence with the enfranchisement deed, and the title to make the enfranchisement cannot be called for: Conv. Act, 1881, s. 3 (2): see Dart, 326.

Reversions.

In the case of a reversionary interest, the instrument

creating it should be abstracted, though more than 40 years old; this being a case in which the old 60 years' limit did not apply: see V. & P. Act, 1874, s. 1; 1 Pres. 19, 247; Dart, 329.

Leaseholds.

In the case of leaseholds, the abstract should, for a similar reason, commence with the lease, although more than 40 years old: see V. & P. Act, 1874, s. 1; 1 Pres. 12; *Frend* v. *Buckley*, L. R. 5 Q. B. 213; but the intermediate title between the lease and the commencement of the last 40 years cannot be required: *Williams* v. *Spargo*, W. N. (1893) 100.

The title to the freehold reversion cannot be called for: V. & P. Act, 1874, s. 2; and in the case of an underlease, the title to the leasehold reversion cannot be called for: Conv. Act, 1881, s. 3 (1); see *Gosling* v. *Woolf*, (1893) 1 Q. B. 39; so that the purchaser cannot require either an abstract or production of such title: *Jones* v. *Watts*, 43 Ch. D. 574. It must also be assumed (unless the contrary appears) that the lease was duly granted: Conv. Act, 1881, s. 3 (4), (5).

In the case of a lease under a power, any preliminary contract for the lease does not form part of the title: Conv. Act, 1882, s. 4; S. L. Act, 1882, s. 31.

Root of title

The nature of the instrument with which the title commences has next to be considered.

It should be a disposition of the legal estate and entire beneficial interest: see Dart, 332.

Freeholds. Conveyance.

In the case of freeholds, a conveyance on sale is the most satisfactory root of title: 1 Pres. 16; see *Bolton* v. *L. S. Bd.*, 7 Ch. D. 770; and next to that, a legal mortgage in fee.

Settlement.

A settlement 40 years old seems to be a good root of title: 1 Pres. 17; but a condition that the title shall commence with an instrument less than 40 years old cannot be enforced if it omits to state that such instrument is a voluntary settlement: *Re Marsh & Granville*, 24 Ch. D. 11.

Chap. II.

Will. A specific devise in a will seems to be a good root of title: 1 Pres. 17; but a general devise is not sufficient without proof of the testator's seisin: *Parr* v. *Lovegrove*, 4 Drew. 170; see Dart, 332.

Appointment. An appointment 40 years old, which recites the power under which it is made, seems in general to be a sufficient root of title: 1 Pres. 7; and the purchaser is precluded from requiring the production of any abstract of the instrument creating the power: Conv. Act, 1881, s. 3 (3); but see Dart, 333.

Disentailing deed. So a disentailing deed 40 years old, which recites the creation of the entail, seems in general to be a sufficient root of title: 1 Pres. 7; but see Dart, 333.

Inclosure award. An inclosure award is not of itself a sufficient root of title, as an allotment is generally subject to the same uses as the land in respect of which it is made: see p. 37; hence, the title of the allottee to such land should be abstracted: see Sug. 373.

Exchange or partition order. For a similar reason, an order of exchange or partition under the Inclosure Acts, is not a good root of title: see *Jacomb* v. *Turner*, (1892) 1 Q. B. 47.

Copyholds. In the case of copyholds, the title should in general commence with a surrender and admittance: see Dart, 333.

Leaseholds. In the case of leaseholds, the lease forming the root of title should not be an underlease: see p. 140.

Parcels. A root of title, in other respects satisfactory, may be insufficient if the parcels are only described by reference to a prior deed.

Insufficient root of title. If the abstract commences at too recent a date, or with an insufficient root of title, the defect should be noticed in the opinion, and a requisition made that the proper title be shown.

Where a condition limiting the title to be shown is void, the purchaser cannot require a full title, but the vendor cannot compel him to complete without showing such a title: *Re Marsh & Granville*, 24 Ch. D. 11.

CHAPTER III.

DEDUCTION OF TITLE.

Deduction of title.

AFTER considering the root of title, the next thing to be attended to is the deduction of title to the vendor.

The instrument with which the title commences and (with the exception in the case of leaseholds mentioned on p. 7) every subsequent instrument through which it is traced, should be abstracted in chief: *Re Stamford, &c., Co. & Knight*, (1900) 1 Ch. 287 (explaining *Re Ebsworth & Tidy*, 42 Ch. D. 23), together with all leases and tenants' agreements, and any orders of court or other documents on which the title depends: *Re Ebsworth & Tidy*, 42 Ch. D. 31; *Re Moody & Yates*, 30 Ch. D. 344. The vendor is bound to do this at his own expense, whether such instruments are in his possession or not, notwithstanding s. 3 (6) of the Conveyancing Act, 1881: *Re Johnson & Tustin*, 30 Ch. D. 42.

Tracings of plans on the deeds should also be furnished at the vendor's expense; but if a tithe map or plan not in the vendor's possession is referred to, the expense of making the tracing seems to fall on the purchaser: see Conv. Act, 1881, s. 3 (6).

If any incumbrance or equitable interest is disclosed, the instrument creating it should be required to be abstracted and its subsequent history deduced in the same way, to show if it has been discharged, or, if subsisting, in whom it is vested.

Exceptions:—

(1) Expired leases need only be produced to show that they have determined: see Dart, 334.

(2) On a sale under a power in a mortgage, the

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subsequent deeds relating to the equity of redemption need not in general be abstracted.

If any gap occurs in the title deduced by the abstracted instruments, the defect should be noticed in the opinion, and a requisition made for the missing title to be shown; and where the facts are not clear, information should be called for: see 1 Pres. 208.

The questions usually arising on a title may conveniently be considered under the following heads:

(1) The form of the abstracted instruments.

(2) The estate granted thereby: see p. 41.

(3) The owner's power of disposition and the devolution of his estate at death: see Chap. IV.

Sect. I.

FORM OF ABSTRACTED INSTRUMENTS.

The instruments through which titles are traced usually consist of Deeds, Wills, and Copyhold and Statutory Assurances, and Orders of Court.

DEEDS.

Deed.

Every part of a deed has to be considered to judge of its effect on the title: see 3 Pres. 58.

Date.

The date should be observed, otherwise a defect in the chronological arrangement of the abstract might lead to mistake as to the nature or validity of the estate granted: see 1 Pres. 4; and see *post*, p. 42.

Where two deeds are executed on the same day, they take effect in such order as will carry out the manifest intention: *Gartside* v. *Silkstone, &c. Co.*, 21 Ch. D. 762.

If the date is wanting, it should be called for.

Parties.

It must not be assumed that a deed is executed by the persons named as parties thereto, unless so stated in the memorandum at the end of the abstract of such deed. Before any conclusion can be arrived at as to the effect of the deed, that memorandum must be referred to; and if it appears therefrom that any granting or consenting party has not executed the deed, it must be read as if he had not been named a party: see 3 Pres. 20, 59; and see *post*, p. 20.

A party granting property, which has been limited to a person of the same name and description by a previous deed, must generally be assumed to be the same person; but where there is a long interval between the two deeds, it is prudent to require some evidence of his identity; see Cov. 321; Dart, 372; *Re Cooper*, 20 Ch. D. 611; and see V. & P. Act, 1874, s. 2.

A mistake in the name of a party may be cured by parol evidence: *Re Howgate & Osborn*, (1902) 1 Ch. 451.

Where a party is once properly described, a mistake in his name in a subsequent part of the deed is immaterial, if there is no doubt as to the person intended: 1 Pres. 62.

If any party appears to be an infant, lunatic, married woman, or bankrupt, the effect of such incapacity on the transaction must be considered; see 3 Pres. 7; and see *post*, Chap. IV. Sect. II.

Recitals.

Recitals require attention, as they may give notice of charges and other instruments affecting the title, or furnish information as to facts on which the title depends, such as the death of life-tenants and annuitants, and the happening of contingencies: see 3 Pres. 8; and see *Trinidad, &c. Co.* v. *Coryat*, (1896) A. C. 587.

If it does not appear whether a recited instrument affects the property or not, the question should be asked; but if answered in the negative, it cannot be pressed: see *Patman* v. *Harland*, 17 Ch. D. 357.

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If a recited instrument appears to relate to the property, a requisition should be made for it to be abstracted in chief and produced, as the purchaser cannot safely rely on any statement as to its contents: see *Patman* v. *Harland*, 17 Ch. D. 357. If, however, it is prior to the root of title, no such requisition can be made: Conv. Act, 1881, s. 3 (3). But in the case of a recited will, the recital should generally be verified by inspection of the register at Somerset House: see 1 Pres. 263.

A mistake in the recitals will not invalidate an independent grant of parcels by a full description: 1 Pres. 62.

The recital of the agreement between the parties should be attended to, as a variation in the operative part by mistake would not be binding in equity: 3 Pres. 12; and general words in the operative part would be controlled by the recital: see *Ex p. Dawes*, 17 Q. B. D. 275.

If any breach of trust is disclosed, its effect on the title must be considered.

Recitals of facts on which the title depends, must generally be verified by evidence: 3 Pres. 8, 229.

Exceptions:—

(1) A recital of the title prior to the time fixed for the commencement of the abstract must be assumed to be correct, any requisition thereon being precluded by the Conv. Act, 1881, s. 3 (3).

(2) A recital 20 years old at the date of the contract is sufficient evidence of the fact or matter recited, unless proved to be inaccurate: V. & P. Act, 1874, s. 2; see *Bolton* v. *L. S. Bd.*, 7 Ch. D. 766; *Re Marsh & Granville*, 24 Ch. D. 11; but recitals of documents seem not to be within the section.

(3) A recital evidently framed for the purpose of keeping notice of a trust off the deed (*e.g.*, the recital in a transfer of mortgage that the transferees are entitled in equity) does not require verification: *Re Harman & Uxbridge, &c. R. Co.*, 24 Ch. D. 720; unless the trusts are disclosed: see *Re Blaiberg & Abrahams*, (1899) 2 Ch. 340.

(4) A recital of payment of the consideration is sufficient evidence of the fact: 3 Pres. 16; see *Rimmer* v. *Webster*, (1902) 2 Ch. 163.

Consideration.

It should be seen that the consideration is expressed to be paid to the persons entitled to receive it, and on a sale by the Court, in the manner directed by the order for sale: see 3 Pres. 16, 18.

The amount of the consideration should be noticed, to see:—

(1) That the deed is not voluntary: see p. 46;

(2) That it is sufficiently stamped: see p. 24.

Receipt clause.

Where the statement of the consideration is followed by the words 'receipt, &c.,' the conveyancer generally assumes that the clause acknowledging its receipt is in due form, it being the duty of the purchaser's solicitor to ascertain this on examining the abstract. This is especially important where the indorsed receipt is omitted in reliance on the 55th section of the Conveyancing Act, 1881: see *Renner* v. *Tolley*, 68 L. T. 815; and see *post*, p. 22.

Where a bond or promissory note has been given for the consideration, evidence of payment should be required: see *Frail* v. *Ellis*, 16 Beav. 350.

Appointment.

Where an appointment under a power is made, either of the estate or of new trustees, the power should be analysed and its terms and formalities noted, to see that it has been duly exercised: 2 Pres. 262; see *post*, p. 72.

Grantor.

It must be seen that the words of grant proceed from the person capable of granting: see 3 Pres. 24; *post*, p. 54.

If the grantor's name is omitted, it must be considered whether the omission is material. If the intention is clear from the rest of the deed, the name may be supplied by construction; otherwise not: 1 Pres. 76; see *Dent* v. *Clayton*, 12 W. R. 903.

It must be seen that trustees grant with the consent of

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those persons whose consent is required by the instrument creating the trust: 3 Pres. 26; see *post*, p. 108.

Words of grant.

Formal words of grant are unnecessary, so long as words showing an intention to transfer the estate are used: 3 Pres. 21; Wms. R. P. 209; see Conv. Act, 1881, s. 49.

Grantee.

The grantee need not be a party to the deed: see 8 & 9 Vict. c. 106, s. 5; but if already dead, the grant fails: *Re Tilt*, 74 L. T. 163.

The omission of the grantee's name from the operative part may be supplied by the *habendum*: 3 Pres. 27; but if there is a grant to one *habendum* to another, the deed may be void for uncertainty, unless the intention is clear from the context: 3 Pres. 28; *Spyve* v. *Topham*, 3 East, 115.

If the grantee appears to stand in any fiduciary position which would invalidate the conveyance, the effect on the title must be considered: see Lewin, 562: *post*, p. 111.

A grant of freeholds by a person directly to himself and another, in a deed executed before 1882, passes the whole estate to the other: see Wms. R. P. 204; but in the case of a similar grant in a deed executed since the 1st of January, 1882, the grantees take jointly: see Conv. Act, 1881, s. 50.

An assignment of leaseholds by a person directly to himself and another in a deed executed before the 13th of August, 1859, passes the whole estate to the other: see Wms. R. P. 204; but in the case of a similar assignment in a deed executed since that day, the assignees take jointly: see 22 & 23 Vict. c. 35, s. 21.

A grant of freeholds by a husband to his wife or by a wife to her husband, in a deed executed before 1882, is void unless a trustee or grantee to uses is interposed: see 1 Pres. 332; but in deeds executed since the 1st of January, 1882, such a grant is valid: Conv. Act, 1881, s. 50; and see M. W. P. Act, 1882, s. 1.

An assignment of leaseholds by a husband to his wife, without the interposition of a trustee, in a deed executed

before 1883, is void unless the husband constitutes himself a trustee: see *Baddeley* v. *Baddeley*, 9 Ch. D. 113; *Fox* v. *Hawks*, 13 Ch. D. 822; but in deeds executed since the 1st of January, 1883, such an assignment seems to be valid: see M. W. P. Act, 1882, s. 1.

Parcels.

It must be seen that the parcels of every deed through which the title is traced comprise the property purchased: see 3 Pres. 31, 205; Sug. 413.

No specific description of the property is necessary, if there are general words wide enough to include it: 3 Pres. 213: *Shardlow* v. *Cotterell*, 20 Ch. D. 95; *Re Kelcey*, (1899) 2 Ch. 530; but general words *primâ facie* apply only to things *ejusdem generis* with those enumerated: see *Crompton* v. *Jarratt*, 30 Ch. D. 298.

Where there is a sufficient specific description, an error in a further detail is immaterial: see *Cowen* v. *Truefitt*, (1899) 2 Ch. 309; thus if the land is described by name, a mistake in the name of the parish or tenant may be disregarded: 3 Pres. 207; see *Re Boulter*, 4 Ch. D. 241.

But where the parcels are merely described as land in the occupation of some one, evidence of such occupation should be called for; so, if merely described as the land purchased from or devised by a particular person, production of the conveyance or will should be required: 1 Pres. 263.

Plan.

Where the parcels refer to a plan, it forms part of the title: *Brown* v. *Wales*, L. R. 15 Eq. 147; and a tracing should be called for to establish the identity: see Dart, 339. The plan is not to be disregarded on account of a manifest error: see *Lyle* v. *Richards*, L. R. 1 H. L. 222; but if inconsistent with the parcels, it is a question of construction which is to prevail: see *Horne* v. *Struben*, (1902) A. C. 454; *Mellor* v. *Walmesley*, (1904) 2 Ch. 525.

Where the property is divided into shares, it must be noticed which of these shares pass by the various deeds: see 3 Pres. 35.

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Soil of road.

A conveyance of land adjoining a public road, *primâ facie* passes the soil of the adjoining half of the road: *Berridge* v. *Ward*, 10 C. B. N. S. 400; even in a town: *Re White's Charities*, (1898) 1 Ch. 659; but this presumption may be rebutted by circumstances showing a contrary intention: *Pryor* v. *Petre*, (1894) 2 Ch. 11; and does not apply to mere intended streets: *Leigh* v. *Jack*, 5 Ex. D. 264.

A similar presumption exists with regard to a conveyance of land adjoining a river: *Micklethwait* v. *Newlay Bridge Co.*, 33 Ch. D. 133; and is rebuttable in the same way: *Devonshire* v. *Pattinson*, 20 Q. B. D. 263.

Ditch.

A boundary ditch is presumed to belong to the owner of the adjoining hedge: see *Marshall* v. *Taylor*, (1895) 1 Ch. 641.

Mines.

Mines and minerals pass by a grant of the fee without being expressly mentioned: see Wms. R. P. 34.

Exceptions:—

(1) In enfranchisement deeds, under the Copyhold Acts: see *post*, p. 34.

(2) In conveyances to a railway or waterworks company under the Consolidation Acts: see 8 & 9 Vict. c. 20, s. 77; 10 & 11 Vict. c. 17, s. 18; *Midland R. Co.* v. *Robinson*, 15 App. Cas. 19; and see Dart, 556.

Reservations.

Reservations and exceptions from the parcels must be noticed and ascertained not to affect the property purchased: see 3 Pres. 36; and see *Sutherland* v. *Heathcote*, (1892) 1 Ch. 475. If an exception is bad for uncertainty or perpetuity the grant takes effect as to the whole: see *Savill* v. *Bethell*, (1902) 2 Ch. 523.

Appurtenances.

The appurtenance clause may be important where a right of way is held with the property: see *Brown* v. *Alabaster*, 37 Ch. D. 490. A clause of this kind is implied in conveyances made since the 1st of January, 1882: see Conv. Act, 1881, s. 6; and passes easements actually enjoyed over the vendor's adjoining property: *International Tea Stores Co.* v. *Hobbs*, (1903) 2 Ch. 165; provided he had

power to grant them: *Quicke* v. *Chapman*, (1903) 1 Ch. 659.

All estate.

The all estate clause is seldom material, as it does not extend the operation of the deed beyond its manifest intention: 3 Pres. 38; *Francis* v. *Minton*, L. R. 2 C. P. 543. A clause of this kind is implied in conveyances made since the 1st of January, 1882: Conv. Act, 1881, s. 63: see *Thellusson* v. *Liddard*, (1900) 2 Ch. 635.

Habendum.

The *habendum* requires attention to see that the grantee's name and the words of limitation are in due form: see 3 Pres. 39; and the validity of the limitations must be considered: see 1 Pres. 314; and see *post*, p. 48.

If the *habendum* is void for limiting a freehold estate *in futuro* (see *Savill* v. *Bethell*, (1902) 2 Ch. 523), the defect may be cured by the operative part containing a valid grant *in præsenti*: *Boddington* v. *Robinson*, L. R. 10 Ex. 270.

The *habendum* is not an essential part of a deed, and if inconsistent with the grant, may be rejected for repugnancy: 3 Pres. 43.

If there is no *habendum*, it must be seen that the operative part contains proper words of limitation.

Words of limitation.

In deeds executed before 1882, the legal estate of inheritance does not pass to a person without the word '*heirs*,' and a legal estate tail is not created without the words '*heirs of the body*:' see 3 Pres. 44; Wms. R. P. 146.

But in deeds executed since the 1st of January, 1882, an estate in fee simple may be conveyed by the words '*in fee simple*,' without the word 'heirs,' and an estate tail may be limited by the words '*in tail*,' without the words 'heirs of the body:' Conv. Act, 1881, s. 51. The words '*in fee*' are not sufficient to pass the fee simple: *Re Ethel & Butler*, (1901) 1 Ch. 945.

In the absence of proper words of limitation, the grantee takes in general only a life estate, whether the estate

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granted be legal or merely equitable: *Re Whiston*, (1894) 1 Ch. 661; *Re Irwin*, (1904) 2 Ch. 752.

Exceptions:—

(1) In the case of contracts and executory trusts, words of limitation are not required: 3 Pres. 44; *Pugh* v. *Drew*, 17 W. R. 988.

(2) In the case of executed trusts, a manifest intention to pass the equitable fee has been held sufficient without words of limitation, where the legal fee was given to the trustees: *Re Tringham*, (1904) 2 Ch. 487; *Re Oliver*, (1905) 1 Ch. 191; *sed qu.*: see cases cited in *Re Irwin*, (1904) 2 Ch. 752.

(3) No words of limitation are required in vesting declarations (see p. 36), or in statutory transfers of mortgages (see p. 37).

(4) No words of limitation are required in a conveyance to an incorporated company or corporation aggregate.

Where the use is declared in favour of the grantee, it is sufficient if the words of limitation are attached to the use; but where the use is declared in favour of a third person, his estate will be no larger than the estate supplying the seisin: 3 Pres. 123.

A term of years may pass by assignment without any words of limitation: 2 Pres. 20; but a mortgage term does not pass by the mere transfer of the benefit of the mortgage except in a case within sect. 27 of the Conv. Act, 1881: *Re Beachey*, (1904) 1 Ch. 67; see *post*, p. 37.

Where the term limited in the *habendum* of a lease differs from that mentioned in the *reddendum*, the former prevails, unless it is shown to be a mistake by the context or by the counterpart: *Burchell* v. *Clark*, 2 C. P. D. 88.

If there are several grantees, it must be noticed whether they are expressly made tenants in common, or in a conveyance to uses, whether there are any words of division; as, if not, they take as joint-tenants: 3 Pres. 49; see

Dart, 958; *Nat. Soc. of Electricity* v. *Gibbs*, (1899) 2 Ch. 299. Chap. III. Sect. I.

It must be considered whether the conveyance operates at common law (see *Savill* v. *Bethell*, (1902) 2 Ch. 523), or whether the uses are executed by the statute, or pass only equitable estates: see 3 Pres. 190. Uses.

A use upon a use gives a mere equitable interest: 1 Pres. 141; *Cooper* v. *Kynock*, L. R. 7 Ch. 398. So, an appointee under a power to appoint to uses takes the use, and any use declared of his seisin confers merely an equitable interest: 3 Pres. 124.

Where a person, having both a power and the estate, appoints to one person to the use of another, and also conveys the estate in the same form, the question whether the beneficiary takes the legal estate depends on the intention shown by the context: see Sug. Pow. 357.

Uses of leaseholds and copyholds are merely equitable interests: 1 Pres. 140, 141.

If there are no uses declared of a freehold estate, it must be considered whether a use is raised by payment of a consideration, or by the context showing an intention that the estate is to remain in the grantee: see 2 Pres. 236—241.

If the conveyance is made subject to all incumbrances affecting the property, inquiry should be made as to what they are: see *Re Alms Corn Charity*, (1901) 2 Ch. 750.

In the case of leaseholds, the *reddendum* in the lease under which the property is held must be noticed, to see that it agrees with the contract, and evidence of payment of the rent should be required: see p. 135. Reddendum.

It must be observed whether there are any covenants restricting the user of the property: see p. 143. Covenants.

In the case of leaseholds, it should be seen that the covenants in the lease are not unusually onerous (see p. 144); and evidence of their performance should be required: see p. 130.

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Covenants for production of title-deeds require attention, as they may disclose instruments affecting the title not elsewhere noticed in the abstract: see 1 Pres. 153.

Covenants for title should be examined to see whether any incumbrances are mentioned: see 3 Pres. 57.

The absence of covenants for title in any of the deeds is not considered an objection to title: 3 Pres. 58; Sug. 575; see *Re Scott & Alvarez*, (1895) 1 Ch. 596.

Memorandum.

The memorandum at the end of each abstracted deed must be referred to for information as to execution, attestation, and indorsed receipt, and acknowledgment, registration, and enrolment, where necessary; and any defect must be considered: see 3 Pres. 59.

Execution.

Where a deed is stated to be duly executed, the conveyancer generally assumes that it is executed by all necessary parties, it being the duty of the purchaser's solicitor to ascertain this on examining the abstract: see Cov. 19; and see *ante*, p. 11.

Execution by the grantee is unnecessary: see *Standing* v. *Bowring*, 31 Ch. D. 282; but the fact of his not executing lets in evidence of disclaimer: see 2 Pres. 226; *Peacock* v. *Eastland*, L. R. 10 Eq. 17.

Sealing is essential to the execution of a deed, but it need not be with wax; anything in the nature of an impression is sufficient: 3 Pres. 61; but where there is no trace of a seal, the mention of sealing in the attestation clause is not to be relied on: see *Nat. Prov. Bk. of England* v. *Jackson*, 33 Ch. D. 1.

In the case of a deed executed by a company or corporation, a copy of the articles of association or incorporating Act should be required, to see that the formalities prescribed for the use of the common seal have been observed; but the directors' minutes need not be inspected: *Gloucester Bank* v. *Rudry Merthyr, &c. Co.*, (1895) 1 Ch. 629.

Power of attorney.

Where a deed appears to have been executed by attorney, an abstract of the power of attorney should be called for, to see (1) that the execution of the deed was authorised by the power: see *Danby* v. *Coutts*, 29 Ch. D. 500; and (2) that the power is under seal: see *Powell* v. *London & Prov. Bk.*, (1893) 2 Ch. 555; and, if money passes, (3) that the power authorised the attorney to give receipts: see *Re Hetling & Merton*, (1893) 3 Ch. 280.

Evidence of non-revocation of the power should also be required: see p. 126.

Exceptions:—

(1) In the case of a power of attorney created since the 1st of January, 1883, if given for value and expressed to be irrevocable, evidence of non-revocation is unnecessary: see Conv. Act, 1882, s. 8.

(2) In the case of a power of attorney created since the 1st of January, 1883 (whether for value or not), if expressed to be irrevocable for a fixed time not exceeding one year, evidence of non-revocation during that time is unnecessary: see Conv. Act, 1882, s. 9.

Before 1882 an attorney could only execute a deed in the name of his principal: Sug. Pow. 199; see *Lawrie* v. *Lees*, 14 Ch. D. 256; but a deed executed since the 1st of January, 1882, by an attorney in his own name, is as effectual as if executed in the name of the principal: Conv. Act, 1881, s. 46.

Before 1882 a married woman could not appoint an attorney: *Kenrick* v. *Wood*, L. R. 9 Eq. 333; but since the 1st of January, 1882, she has been able to do so: see Conv. Act, 1881, s. 40.

A mortgagee can sell by attorney, but it must be seen that the power of attorney extends to mortgage estates: see *Re Dowson & Jenkins*, (1904) 2 Ch. 219.

If the person executing by attorney appears to have been a trustee or donee of a special power of appointment, it must be seen that the trust or power was not delegated:

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3 Pres. 67; see *Re Hetling & Merton*, (1893) 3 Ch. 269, 280; *Re Airey*, (1897) 1 Ch. 164.

Escrow.

When a deed appears to have been delivered as an escrow, it must be seen that the conditions have been performed and that the second delivery has taken place: see 1 Pres. 275; *Watkins* v. *Nash*, L. R. 20 Eq. 262; *London Freehold, &c. Co.* v. *Suffield*, (1897) 2 Ch. 608.

Attestation.

Attestation is not essential to the validity of a deed, except in the following cases:—

(1) Where prescribed by a power: 3 Pres. 71; in which case, if the deed was executed before the 13th of August, 1859, the terms of the power should be ascertained to have been complied with: Sug. 415; but if executed since that day, attestation by two witnesses is sufficient: 22 & 23 Vict. c. 35, s. 12; and see *post*, p. 73.

(2) Where a party has made his mark instead of signing his name, attestation appears to be necessary not only to record the fact, but also to show that the deed was read over and explained to him: see Cov. (Notes) ii.

Indorsed receipt.

Deeds executed before 1882 required an indorsed receipt for the consideration, unless there was a recital of its payment; the want of an indorsed receipt being constructive notice that it had not been paid: 3 Pres. 15; but, all such deeds being now more than 20 years old, the receipt in the body of the deed seems sufficient evidence under the V. & P. Act, 1874, s. 2; and see 3 Pres. 15.

In the case of deeds executed since the 1st of January, 1882, a receipt either in the body of the deed or indorsed thereon is sufficient: Conv. Act, 1881, s. 55; see *Bickerton* v. *Walker*, 31 Ch. D. 151; *Lloyd's Bank* v. *Bullock*, (1896) 2 Ch. 192.

Acknowledgment.

In the case of a married woman's conveyance, it must be considered whether acknowledgment is necessary (see p. 86); and if so, in the case of a deed executed before

1883, it should not merely be seen that the memorandum at the end of the deed contains a statement that it has been duly acknowledged, but the usual evidence of acknowledgment should be required: see p. 125.

Registration in local registry.

If the property is situate in Middlesex or Yorkshire, it should be seen that there is a proper reference to the register in the memorandum at the end of each deed: see 3 Pres. 59. If such a reference is wanting, a requisition should be made that the deed be registered at the vendor's expense: see Sug. 546; and see *post*, p. 47.

Exceptions:—

(1) A deed which passes no interest in the land itself does not require registration: *Arden* v. *Arden*, 29 Ch. D. 702.

(2) Land registered under the Land Transfer Act, 1875, is after registration exempt from the jurisdiction of the Middlesex and Yorkshire registries: 38 & 39 Vict. c. 87, s. 127; but since the 1st of January, 1898, this section does not apply to estates and interests excepted from the effect of registration under a possessory or qualified title, nor to an unregistered reversion on a registered leasehold title, nor to dealings with incumbrances created prior to the registration of the land: 60 & 61 Vict. c. 65, Sched. I.; see L. T. Rules, 1898, r. 24, L. T. Rules, 1903, r. 28.

(3) Since the 1st of April, 1892, registration with a possessory title renders it unnecessary to register in Middlesex the instrument conferring the right to apply for such registration: 54 & 55 Vict. c. 64, Sched. I., r. 14.

Registration under L. T. Acts.

If the property is situate within the area of compulsory registration under the Land Transfer Acts (see Chap. VIII.), it should be noticed whether any conveyance on sale has been executed since registration became compulsory, and if so, the title, if not registered, should be required to be registered at the vendor's expense before completion.

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Enrolment.

In the case of a disentailing deed, it should be seen that there is a memorandum of its enrolment in Chancery, within 6 months after execution: see Sug. 468; and see *post*, p. 63.

Stamps.

It should be seen that all modern deeds on which the title depends are duly stamped: see Sug. 411; Cov. 29. Under an open contract, the purchaser is entitled to have this done at the vendor's expense: *Whiting to Loomes*, 14 Ch. D. 822; 17 Ch. D. 10; even in the case of tenants' agreements: *Coleman* v. *Coleman*, 79 L. T. 66; and in the case of deeds executed since the 16th of May, 1888, notwithstanding any stipulation to the contrary: see 54 & 55 Vict. c. 39, s. 117. For Tables of Stamp Duties, see *Appendix*.

Alterations.

Alterations by erasure or interlineation in a deed after execution, do not divest any estate which has passed; but if in a material part, avoid the deed, so that the covenants in it cannot be enforced: Wms. R. P. 151; see *Re Batten*, 22 Q. B. D. 685; *Re Howgate & Osborn*, (1902) 1 Ch. 451.

The presumption that alterations have been made prior to execution may be rebutted (see Cov. 11); accordingly, where an alteration affecting the title is not initialled by the attesting witnesses or noticed in the attestation clause, evidence that it was made before execution should be required.

WILLS.

Will.

In perusing a will the following points have to be attended to:—

(1) Whether there is any devise of the property;

(2) What estate passes; and

(3) Whether subject to any trusts or charges: see 3 Pres. 148.

Specific devise.

The whole of a will requires perusal to see whether

there is any specific devise of the property, and if so, whether it is modified or rendered contingent by any subsequent condition or gift over. If there is no specific devise, a general devise must be looked for: see 3 Pres. 158.

The validity of the gift must also be considered: see *post*, p. 48. This is not affected by the law of the testator's domicil, whether the property be real or leasehold: *Freke* v. *Carbery*, L. R. 16 Eq. 461.

Devise to charity.

Devises of land to charitable uses by testators dying before the 5th of August, 1891, are in general void: see 9 Geo. II. c. 36; 51 & 52 Vict. c. 42; but such devises by testators dying since that day are valid: 54 & 55 Vict. c. 73, ss. 5, 9; even if reversionary: *Re Bridger*, (1894) 1 Ch. 297; *Re Hume*, (1895) 1 Ch. 422; see *post*, p. 116.

The following rules of construction apply to wills made since the 1st of January, 1838, unless a contrary intention appears.

General devise.

A general devise of the testator's land passes all freeholds, copyholds, and leaseholds, belonging to him at his death: see 1 Vict. c. 26, ss. 24, 26.

A general devise includes property which the testator has power to appoint 'in any manner he may think proper' (s. 27). This section applies to general powers: see *Williams* v. *Mitchell*, (1891) 3 Ch. 474. But a power which requires the appointment to refer to the power, or comply with some formality (other than of execution or attestation) which the will does not comply with, is not within the section: *Phillips* v. *Cayley*, 43 Ch. D. 222; neither is a power of revocation and new appointment: *Re Brace*, (1891) 2 Ch. 671.

Words of limitation.

A devise of real estate without words of limitation passes the fee simple or other the whole estate of the testator (s. 28), and a bequest of leaseholds passes the whole term: 3 Pres. 150.

A devise of real estate to a person and his children,

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when he has no child at the date of the will, gives him an estate tail: see Hawkins, 198; *Clifford* v. *Koe*, 5 App. Cas. 447.

Where the property is given to two or more persons, it must be noticed whether there are any words of division, as if not, they take as joint-tenants: 3 Pres. 49; see *Re Yates*, (1891) 3 Ch. 53.

Where the property is given to a married woman, it should be ascertained whether the will contains any clause making her interest separate estate or subject to a restraint on anticipation: see *Stanley* v. *Stanley*, 7 Ch. D. 589.

Lapse.

It must be ascertained whether the devisee has survived the testator, as if not, the devise in general lapses: see 3 Pres. 238.

Exceptions:—

(1) Devises of estates tail do not lapse if inheritable issue survive the testator: 1 Vict. c. 26, s. 32.

(2) A gift to children or other issue of the testator who leave issue living at his death does not lapse (s. 33): *Re Hensler*, 19 Ch. D. 612; unless the gift is to them as a class: *Re Harvey*, (1893) 1 Ch. 567; or by appointment under a special power: *Holyland* v. *Lewin*, 26 Ch. D. 266.

(3) A gift to several as joint-tenants goes to those who survive the testator: *Morley* v. *Bird*, 3 Ves. 629.

(4) In the case of a gift to a class, the members surviving the testator take the whole: *Re Coleman & Jarrom*, 4 Ch. D. 165.

Residuary devise.

Property comprised in lapsed and void devises passes under the residuary devise (s. 25): *Blight* v. *Hartnoll*, 23 Ch. D. 218; but so far as the residuary devise is void or lapses, it goes as on an intestacy: see *Sykes* v. *Sykes*, L. R. 3 Ch. 301.

Charge of debts, &c.

It must be observed whether any debts, legacies, or annuities are charged on the estate.

A general direction that the testator's debts are to be paid, makes them a charge on his real estate; but a direction that they are to be paid by the executors, only charges real estate devised to them: Hawkins, 282; *Re Tanqueray-Willaume & Landau*, 20 Ch. D. 465.

A gift of legacies, preceding a residuary gift of real and personal estate combined, charges the legacies on the real estate: Hawkins, 294; *Re Brooke*, 3 Ch. D. 630; see *Re Bawden*, (1894) 1 Ch. 693.

It must be considered whether the legal estate passed by the devise, or whether the assent of the executor is required: see as to freeholds p. 56; copyholds p. 60; leaseholds p. 70.

Trusts.

It must be noticed whether the will contains any clause making the devisee of the property a trustee, and whether the beneficial interest is disposed of by the will: see *Longley* v. *Longley*, L. R. 13 Eq. 133.

Devise to trustees.

In the case of a devise to trustees, it must be considered whether they take the legal estate in fee simple; the general rule being that apart from the provisions of the Land Transfer Act, 1897, they take only so much of the legal estate as the purposes of the trust require, unless an intention to give them the fee is shown, as by a trust to pay debts or a general power of sale or leasing: Hawkins, 143—158; *Marshall* v. *Gingell*, 21 Ch. D. 790; see *Re Brooke*, (1894) 1 Ch. 43; *Re Adams & Perry*, (1899) 1 Ch. 554.

A similar rule prevails as to copyholds and leaseholds: see *Baker* v. *White*, L. R. 20 Eq. 177; *Re Townsend*, (1895) 1 Ch. 716.

Trust and mortgage estates.

In the case of the will of a trustee or mortgagee dying before 1882, it must be considered whether the trust or mortgage estate passes.

If there is no specific devise of trust or mortgage estates they pass by a general devise, unless an intention

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is shown to confine the devise to beneficial interests, *e.g.*, by a charge of debts or legacies, or by limitations in strict settlement: 3 Pres. 240; *Re Bellis*, 5 Ch. D. 504; *Re Packman & Moss*, 1 Ch. D. 214.

Exceptions:

(1) In the case of a 'bare trustee' dying between the 7th of August, 1874, and the 31st of December, 1875: see V. & P. Act, 1874, s. 5; *post*, p. 114.

(2) In the case of a trustee or mortgagee dying since the 1st of January, 1882: see Conv. Act, 1881, s. 30; *post*, pp. 101, 115.

Execution.

The memorandum at the end of the will should be noticed to see whether it is signed by the testator and attested by two witnesses: see 1 Vict. c. 26, s. 9; as, if not, the devise fails, whatever the testator's domicil: *Pepin* v. *Bruyère*, (1902) 1 Ch. 24; unless, in the case of leaseholds, Lord Kingsdown's Act applies: see 24 & 25 Vict. c. 114; *Re Grassi*, (1905) 1 Ch. 584.

An appointment by will must be executed in the same manner, and is then valid, although some additional or other form of execution or attestation is required by the power (s. 10): see *Taylor* v. *Meads*, 4 D. J. & S. 597.

Attesting witnesses.

Where there is a beneficial devise of the property the names of the attesting witnesses should be called for, to see that the devise is not rendered void by reason of the devisee being an attesting witness or the husband or wife of one: see s. 15; *Anderson* v. *Anderson*, L. R. 13 Eq. 381. A devise to a trustee is not liable to be so avoided: *Cresswell* v. *Cresswell*, L. R. 6 Eq. 69.

Registration.

Where the property is situate in Middlesex or Yorkshire, it should be noticed whether the memorandum at the end of the will states it to have been registered within six months from the testator's death; if not, the fact should be ascertained and any defect in this respect considered: see Dart, 701.

Non-registration of a will of freeholds is not necessarily a defect in title, as since the 7th of August, 1874, a conveyance for value by the devisee or some one deriving title under him, if registered before, prevails over any assurance from the heir: V. & P. Act, 1874, s. 8; and see York. Reg. Act, 1884, ss. 11—14; 48 & 49 Vict. c. 26, s. 4. But in such a case, evidence of heirship should be required, and search made against the heir, unless the testator has died since the 1st of January, 1898, in which case non-registration seems not to be a defect, as the title must be traced through the executor.

Non-registration of a will of leaseholds seems not to be a defect of title: Sug. 546; see Dart, 702.

Probate.

Probate is unnecessary in the case of a will relating only to freeholds where the testator died before 1898, or copyholds, but in the case of freeholds where the testator has died since the 1st of January, 1898, and in the case of leaseholds, it is required to complete the evidence of title: see Sug. 414, 415; *post*, p. 136.

Renunciation of probate may affect the devolution of real estate where the executors are also trustees, as it affords evidence of disclaimer: *Re Gordon*, 6 Ch. D. 534.

Alterations.

Alterations by erasure or interlineation in a will are presumed to be made after its execution: see *Re Sykes*, L. R. 3 P. & D. 26; and such alterations have no effect unless executed as a will: 1 Vict. c. 26, s. 21.

Revocation.

In the subsequent part of the abstract, attention must be directed to see whether the will has been revoked by the testator's marriage, or by a subsequent will or codicil: see 3 Pres. 181; 1 Vict. c. 26, ss. 18, 20.

Marriage does not revoke a will in exercise of a power, unless the estate would in default of appointment pass to the testator's heir, personal representative, or next of kin (s. 18): *Re Russell*, 15 P. D. 111.

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A subsequent conveyance does not operate as a revocation where the testator has power of disposition over the property at his death (s. 23): see *Re Clowes*, (1893) 1 Ch. 214.

As to the effect of a contract for sale or option of purchase, see *post*, p. 115.

COPYHOLD ASSURANCES.

The principal points to be attended to in perusing surrenders and admittances are as follows:

Surrender.

It should be seen that the person who surrenders has been admitted, as if not, the surrender will be void: Scriv. 97.

A man may surrender to the use of his wife: Scriv. 93.

Married woman.

If the surrenderor is a married woman, it should be seen that her husband's assent and her separate examination are recorded, as in the absence of such assent and examination, her surrender is void: Scriv. 90, 91: except in cases falling within the Married Women's Property Act, 1882: see *post*, p. 90.

Power of attorney.

If the surrender is by attorney, an abstract of the power of attorney should be called for, to see that the surrender is authorised: see Scriv. 89; and evidence of non-revocation should be required, unless the case falls within the 8th or 9th section of the Conveyancing Act, 1882: see *ante*, p. 21.

Parcels.

It should be seen that the property purchased is comprised in each surrender and admittance through which the title is traced; but as the old descriptions are adhered to in the court rolls, less certainty is required than in the case of freeholds, provided evidence is forthcoming of the property having been enjoyed for a long period under such description: see *Long* v. *Collier*, 4 Rus. 267.

Uses.

The uses in the surrender should be attended to, as they govern the operation of the admittance: Scriv. 101.

For the same reason, the surrender should be ascertained to contain proper words of limitation: see Scriv. 103.

Admittance.

It should be seen that the surrender is completed by admittance, as until then the surrenderee has no legal title: Scriv. 122; see *post*, p. 43.

A conditional surrender by way of mortgage, if not completed by admittance, may be vacated by acknowledgment of satisfaction entered on the court rolls: Scriv. 108.

It should be seen that the person admitted is the surrenderee, as if a stranger is admitted, he does not acquire any estate: Scriv. 101; but it is immaterial whether the surrenderee is admitted in person or by attorney: Scriv. 130; 50 & 51 Vict. c. 73, s. 2; 57 & 58 Vict. c. 46, s. 84; and if admitted by attorney, the power need not be called for.

A married woman can take an admittance by attorney: 1 Will. IV. c. 65, ss. 3, 4.

No surrender to the use of a will is required: 1 Vict. c. 26, s. 3; but the estate descends to the heir until the devisee is admitted: *Garland* v. *Mead*, L. R. 6 Q. B. 441; and this seems not to be altered by the Land Transfer Act, 1897: see p. 60.

The estate limited by the admittance must be compared with the uses of the surrender, as any variation in the admittance would be void: see Scriv. 101.

The admittance of a life-tenant is in general the admittance of the remainderman: Scriv. 131; but not where the remainder is contingent: *Rider* v. *Wood*, 1 K. & J. 644.

In the case of a surrender to such uses as a third person shall appoint, only the appointee has to be admitted: Scriv. 136.

So, executors, merely directed by will to sell, can convey by bargain and sale, and only the purchaser has to be admitted: Scriv. 191; unless the testator was merely equitably entitled: *Re Townsend*, (1895) 1 Ch. 716.

A trustee in bankruptcy can convey the bankrupt's

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copyholds by appointment, and only the purchaser has to be admitted: B. Act, 1869, s. 22; B. Act, 1883, s. 50.

Steward's copies.

It should be seen that the copies of court roll of all surrenders and admittances purport to be signed by the steward: Cov. 156: see Dart, 346.

Surrenders and admittances of property situate in Middlesex or Yorkshire, do not require registration in the local registry: Sug. 731; York. Reg. Act, 1884, s. 28.

Stamps.

It should be ascertained that all modern copyhold assurances on which the title depends are duly stamped: see *ante*, p. 24.

Surrenders.

Surrenders out of court and the copies of court roll of surrenders in court have, during the last 40 years, been charged as follows:—

(1) If on a sale, or on a mortgage alone, with the same stamp duty as conveyances or mortgages by deed: see *Appendix;* and see 33 & 34 Vict. c. 97, ss. 77, 110; 54 & 55 Vict. c. 39, ss. 61, 87.

(2) In other cases:—

(*a*) Before 1871, with £1 and progressive duty of 10*s*., if the clear yearly value exceeded 20*s*.; and 5*s*. and progressive duty of 5*s*., if it did not: 55 Geo. III. c. 184; 13 & 14 Vict. c. 97.

(*b*) Since the 1st of January, 1871, with 10*s*.: 33 & 34 Vict. c. 97; 54 & 55 Vict. c. 39.

The steward's certificate on the face of the copy, or in the margin of the entry on the court rolls, is sufficient evidence of the surrender being duly stamped: 54 & 55 Vict. c. 39, s. 65.

Admittances.

Admittances out of court and the copies of court roll of admittances in court, between the 11th of October, 1850, and the 31st of December, 1870, were charged as follows:—

(1) If on a sale or mortgage, with 2*s*. 6*d*. and progressive duty of 2*s*. 6*d*.: 13 & 14 Vict. c. 97.

(2) In other cases, with £1 and progressive duty of 10*s.*, if the clear yearly value exceeded 20*s.*; and 5*s.* and progressive duty of 5*s.*, if it did not: 55 Geo. III. c. 184; 13 & 14 Vict. c. 97.

Admittances since the 1st of January, 1871, have not been charged with any duty.

ENFRANCHISEMENT DEEDS.

Enfranchisement deeds.

The conveyance of the freehold of inheritance by the lord to the tenant on the court rolls, extinguishes the copyhold tenure (see Scriv. 326); transforming equitable interests in the copyhold into similar interests in the freehold (see Scriv. 328); but barring any entail: see *post*, p. 64.

The tenant takes subject to any incumbrances on the manor: 1 Pres. 302; except (1) where the enfranchisement is under the Copyhold Acts: see *infrà*; or, (2) since the 16th of September, 1887, where the consideration is under £500, and the lord makes a statutory declaration showing that he is entitled to make the enfranchisement and to receive the consideration money for his own use: see 50 & 51 Vict. c. 73, s. 26; 57 & 58 Vict. c. 46, s. 89.

If the enfranchisement is not made to the tenant on the rolls, the copyhold interest is not extinguished: Scriv. 328; see *Minton* v. *Kirwood*, L. R. 3 Ch. 614.

Where the lord is merely a life-tenant, he can only enfranchise under a power contained in the settlement of the manor or conferred by statute: Scriv. 327.

Copyhold Acts.

A lord who is merely life-tenant can effect an enfranchisement under the Copyhold Acts, by a deed with the consent of the Copyhold Commissioners, or their successors the Land Commissioners (S. L. Act, 1882, s. 48) or Board of Agriculture (52 & 53 Vict. c. 30, s. 2): the enfranchisement money being paid into court or to trustees, as provided

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by the Acts: see 4 & 5 Vict. c. 35, s. 56; 6 & 7 Vict. c. 23, s. 14; 15 & 16 Vict. c. 51, s. 39; 57 & 58 Vict. c. 46, s. 26: and no proof of the lord's title need be required: see *Kerr* v. *Pawson*, 25 Beav. 394; but mines are not included without the lord's consent in writing: 4 & 5 Vict. c. 35, s. 82; 15 & 16 Vict. c. 51, s. 48; 57 & 58 Vict. c. 46, s. 23.

The land becomes freehold, free from incumbrances affecting the manor, and discharged from any custom of descent, freebench or curtesy (saving vested rights), but continues to be held under the same title, and subject to the same limitations and mortgages, as the copyhold estate: 4 & 5 Vict. c. 35, ss. 64, 79, 81; 15 & 16 Vict. c. 51, ss. 34, 46; 57 & 58 Vict. c. 46, s. 21.

Restrictive conditions as to user are extinguished, unless preserved by the enfranchisement deed: *Brabant* v. *Wilson*, L. R. 1 Q. B. 44.

Execution of the deed by the Copyhold Commissioners, Land Commissioners, or Board of Agriculture, is conclusive evidence of all requirements of the Acts having been complied with: 15 & 16 Vict. c. 51, s. 33; 57 & 58 Vict. c. 46, s. 61; see *Kerr* v. *Pawson*, 25 Beav. 394.

Ecclesiastical manors.

Copyholds held of a manor belonging to an ecclesiastical corporation may be enfranchised with the approval in writing of two of the Church Estates Commissioners (14 & 15 Vict. c. 104, s. 1; 22 & 23 Vict. c. 46, s. 1), the enfranchisement deed being confirmed by them (14 & 15 Vict. c. 104, s. 5), and the enfranchisement money being paid either on their receipt or into the Bank of England to such account as they appoint (s. 6); and where on an enfranchisement under the Copyhold Acts it appears to the Copyhold Commissioners, Land Commissioners, or Board of Agriculture, that it might have been effected under the Act 14 & 15 Vict. c. 104, the consideration has to be paid in the same way: 21 & 22 Vict. c. 94, s. 5; 57 & 58 Vict. c. 46, s. 75.

Since the 1st of January, 1883, the life-tenant of a manor has been able to effect an enfranchisement by a sale of the freehold under the powers of the Settled Land Act, 1882, s. 3: see *post*, p. 65. S. L. Act, 1882.

If the property is situate in Middlesex or Yorkshire, the enfranchisement deed requires registration in the local registry: *Reg.* v. *Middlesex Registrar*, 21 Q. B. D. 555. Registration.

An enfranchisement deed requires the same stamps as an ordinary conveyance. Stamps.

STATUTORY ASSURANCES.

In the case of assurances taking effect under Acts of Parliament, the statutory provisions relating thereto should be ascertained to have been complied with. Statutory assurances.

The assurances of this kind most usually met with are:—Vesting Orders under the Trustee Acts; Vesting Declarations under the Conveyancing Act, 1881, or the Trustee Act, 1893; Statutory Transfers of Mortgages under the Conveyancing Act, 1881; Awards and Orders of Exchange and Partition under the Inclosure Acts; Enfranchisement Awards under the Copyhold Acts; and Enlargement Deeds under the Conveyancing Act, 1881.

VESTING ORDERS.

A vesting order of freeholds or leaseholds under any of the Trustee Acts, 1850, 1852, and 1893, or the Lunacy Act, 1890, has in general the same effect as if the trustee or mortgagee in whom the land was vested at the date of the order had been free from disability and had duly executed a conveyance or assignment for the estate mentioned in the order: see 13 & 14 Vict. c. 60, ss. 3—34; 15 & 16 Vict. c. 55, ss. 2, 8; 53 Vict. c. 5, s. 135; 56 & 57 Vict. c. 53, s. 32; see *Re Montagu*, (1896) 1 Ch. 549. Vesting order. Freeholds and leaseholds.

A vesting order of copyholds does not dispense with surrender or admittance, unless made with the consent of Copyholds.

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the Lord of the Manor: see 13 & 14 Vict. c. 60, s. 28; 53 Vict. c. 5, s. 135; 56 & 57 Vict. c. 53, s. 34.

Evidence.

No evidence need be required of the facts on which the order is founded: see 13 & 14 Vict. c. 60, s. 44; 53 Vict. c. 5, s. 140; 56 & 57 Vict. c. 53, s. 40.

Stamps.

It should be seen that the order is duly stamped as a conveyance: see 15 & 16 Vict. c. 55, s. 13; 33 & 34 Vict. c. 97, ss. 70, 78; 54 & 55 Vict. c. 39, ss. 54, 62.

Vesting orders in suits.

Where an order is made for specific performance, partition, or exchange, or generally for conveyance, and any party to the suit is declared to be a trustee, his estate can be passed by a vesting order: 13 & 14 Vict. c. 60, s. 30; 56 & 57 Vict. c. 53, s. 31. So, where an order for sale has been made, the estate of any party to the suit can be passed by a vesting order: 15 & 16 Vict. c. 55, s. 1; 56 & 57 Vict. c. 53, s. 30.

Conveyance by order.

Where an order has been made appointing a person to convey land, his conveyance, in conformity with the terms of the order, has the same effect as a vesting order: see 13 & 14 Vict. c. 60, s. 20; 47 & 48 Vict. c. 61, s. 14; 53 Vict. c. 5, s. 135; 56 & 57 Vict. c. 53, s. 33.

VESTING DECLARATIONS.

Vesting declaration.

A vesting declaration under the 34th section of the Conveyancing Act, 1881, or the 12th section of the Trustee Act, 1893, has the effect of passing the trust estate in the following cases:—

(1) If contained in a deed by which a new trustee is appointed, it must be made by the appointor, and must purport to vest the trust estate in the persons who, by virtue of the deed, become and are the trustees (sub-s. 1).

(2) If contained in a deed by which a retiring trustee is discharged under either Act, it must be made by the retiring and continuing trustees, and by the other person (if any) empowered to appoint trustees, and must purport to vest the estate in the continuing trustees alone (sub-s. 2).

The legal estate in copyholds cannot be passed by a

vesting declaration (sub-s. 3): nor can land held as security for trust money (*ib.*): but land of which the mortgagor has declared himself a trustee for the mortgagee can be passed in this way: *London, &c. Co.* v. *Goddard*, (1897) 1 Ch. 642.

It should be ascertained that the deed is executed by all the persons making the declaration.

Where the property is in Middlesex or Yorkshire the deed requires registration.

It should be seen that the deed is duly stamped.

If new trustees are appointed by the same deed, two 10*s.* stamps are required, as the deed operates as a conveyance: see *post*, p. 187; and the Revenue Authorities claim a similar duty where a retiring trustee is discharged by the same deed.

STATUTORY TRANSFERS.

Statutory transfer.

The transfer of the benefit of a statutory mortgage, under sect. 27 of the Conv. Act, 1881, passes both the debt and the estate without words of limitation, provided the following conditions are complied with:—

(1) The transfer must be by deed;

(2) It must be expressed to be made by way of statutory transfer of mortgage;

(3) It must be in one of the forms given in Part II. of the 3rd Schedule to the Act, subject to any necessary variations and additions.

Only a statutory mortgage (*i.e.*, one made by deed in the form given in Part I. of the 3rd Schedule to the Act, and expressed to be by way of statutory mortgage: see ss. 26, 27) can be transferred in this way (sub-s. 1): *Re Beachey*, (1904) 1 Ch. 67.

INCLOSURE AWARDS.

Inclosure award.

It should be ascertained under what Act the award is made: see 15 & 16 Vict. c. 79, s. 1; and a King's printer's copy should be obtained: Sug. 407.

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The allotment should be seen to be authorised by the Act, and any statutory provisions as to the tenure or title of the land noted: see Sug. 375.

The title to the land in respect of which the award is made should be investigated, as the Inclosure Acts make the allotment subject to the same title and tenure: see 8 & 9 Vict. c. 118, ss. 93, 94; 17 & 18 Vict. c. 97, s. 8; Sug. 373; and see *Williams* v. *Phillips*, 8 Q. B. D. 437.

If the award is made under the Inclosure Acts, 1845 to 1870, confirmation by the Inclosure Commissioners, or their successors the Land Commissioners, under their hands and seal, or by the Board of Agriculture, under their seal, seems to be sufficient evidence of its validity: see 8 & 9 Vict. c. 118, s. 105; S. L. Act, 1882, s. 48; 52 & 53 Vict. c. 30, s. 2; though not conclusive as to the title of the allottee: see *Jacomb* v. *Turner*, (1892) 1 Q. B. 47.

An award under these Acts is not chargeable with stamp duty: 8 & 9 Vict. c. 118, s. 163.

EXCHANGE ORDERS.

Exchange order.

An order of exchange under the Inclosure Acts, 1845 to 1870, makes the land taken in exchange subject to the same title as that by which the land given in exchange was previously held: 8 & 9 Vict. c. 118, s. 147: see *Minet* v. *Leman*, 7 D. M. & G. 340.

Confirmation of the order under the hands and seal of the Inclosure Commissioners, or Land Commissioners, or under the seal of the Board of Agriculture, is sufficient evidence of its validity: 8 & 9 Vict. c. 118, s. 105; 39 & 40 Vict. c. 56, s. 33; S. L. Act, 1882, s. 48; 52 & 53 Vict. c. 30, s. 2.

But it should be ascertained that the order was made upon the application of all the 'persons interested' (see 8 & 9 Vict. c. 118, s. 16; 17 & 18 Vict. c. 97, s. 5); and that the allottee had a good title to the land given in exchange: see *Jacomb* v. *Turner*, (1892) 1 Q. B. 47.

PARTITION ORDERS.

Partition order.

An order of partition under the Inclosure Acts, 1845 to 1870, gives the joint owners the allotted parts in severalty, subject to the same title as that by which they held their undivided shares: 11 & 12 Vict. c. 99, s. 13.

Confirmation of the order under the hands and seal of the Inclosure Commissioners, or Land Commissioners, or under the seal of the Board of Agriculture, is sufficient evidence of its validity: see 8 & 9 Vict. c. 118, s. 105; 39 & 40 Vict. c. 56, s. 33; S. L. Act, 1882, s. 48; 52 & 53 Vict. c. 30, s. 2.

But it should be ascertained that the order was made on the application of all the 'persons interested' (8 & 9 Vict. c. 118, s. 16; 17 & 18 Vict. c. 97, s. 5), and that the allottee had a good title to his undivided share: see *Jacomb* v. *Turner*, (1892) 1 Q. B. 47.

ENFRANCHISEMENT AWARDS.

Enfranchisement award.

An enfranchisement award under any of the Copyhold Acts, when confirmed by the Copyhold Commissioners, or their successors the Land Commissioners, or Board of Agriculture, has the same effect as an enfranchisement deed under the same Acts: 21 & 22 Vict. c. 94, ss. 10, 18; 57 & 58 Vict. c. 46, ss. 10, 21; see *ante*, p. 33.

Restrictive conditions as to user annexed to the copyhold interest, are extinguished by the enfranchisement: see *Brabant* v. *Wilson*, L. R. 1 Q. B. 44; unless continued by the award: see 50 & 51 Vict. c. 73, s. 8; 57 & 58 Vict. c. 46, s. 13.

Confirmation of the award under the hands and seal of the Copyhold Commissioners, or Land Commissioners, or under the seal of the Board of Agriculture, is conclusive evidence of all directions in the Acts having been complied with: 15 & 16 Vict. c. 51, s. 33; 57 & 58 Vict. c. 46, s. 61.

Before the 1st of October, 1858, enfranchisement awards were not chargeable with stamp duty: 15 & 16 Vict. c. 51, s. 50; but since that date such awards have been charged with the same duty as enfranchisement deeds: 21 & 22 Vict. c. 94, s. 32; 57 & 58 Vict. c. 46, s. 58.

ENLARGEMENT DEEDS.

Enlargement deed.

A term may be enlarged into a fee simple by a declaration under the Conveyancing Act, 1881, provided the following conditions be fulfilled:—

(1) The declaration must be by deed, made by a person beneficially entitled to possession in right of the term, or in receipt of income as trustee in right of the term, or having the term vested in him as trustee for sale or personal representative;

(2) The term must have been originally at least 300 years, and the unexpired residue must be at least 200 years; and

(3) It must not be subject to (*a*) any trust or right of redemption in favour of the reversioner, or (*b*) any rent having a money value: Conv. Act, 1881, s. 65; see *Re Chapman & Hobbs*, 29 Ch. D. 1007.

(4) It must not be determinable by re-entry for condition broken; and

(5) In the case of a sub-term, the superior term must be capable of enlargement: Conv. Act, 1882, s. 11.

The fee simple acquired is subject to the same title as the term: Conv. Act, 1881, s. 65.

FORECLOSURE ORDERS.

Foreclosure order.

A foreclosure order absolute, obtained by a legal mortgagee, operates as a conveyance to him of the equity of redemption: *Heath* v. *Pugh*, 6 Q. B. D. 345; but he does not get a good title unless all the persons interested in the equity of redemption are parties to or represented in the action: see *Wallace* v. *Eversheld*, (1899) 1 Ch. 895.

The trustees and executors of a mortgagor dying before 1898 sufficiently represent the beneficiaries: see *Booth* v. *Kettlewell*, 62 L. J. Ch. 40; *Re Mitchell*, 65 L. T. 851; and where the mortgagor has died since the 1st of January, 1898, his personal representatives sufficiently represent them: see *Re Harrowby and Paine*, (1902) W. N. 137.

Foreclosure orders do not require registration under the Middlesex Act: see *Burrows* v. *Holley*, 35 Ch. D. 128.

Before 1895 foreclosure orders were not considered to be liable to *ad valorem* stamp duty (see *In. Rev. Comrs.* v. *Tod*, (1898) A. C. 416); but orders made since the 1st of January, 1892, are (by an Act passed in 1898) charged as conveyances on sale with *ad valorem* duty on an amount not exceeding the value of the property, as to which a statement in the order is conclusive: 61 & 62 Vict. c. 10, s. 6; see *post*, p. 193.

SECT. II.

ESTATE GRANTED.

In considering the effect of any instrument, it must be ascertained:—

(1) Whether the estate passed is legal or equitable;
(2) Whether it merges in any other estate;
(3) Whether it is absolute or defeasible;
(4) Whether it is avoided by any rule of law.

LEGAL AND EQUITABLE ESTATES.

Legal and equitable estates.

There can be only one legal estate of inheritance in freeholds or copyholds; so, there can be only one legal estate in a term of years; but there may be any number of equitable estates.

Thus, if a legal owner in fee makes several mortgages

in fee in succession, only the first mortgagee obtains the legal estate, and all the other mortgagees acquire merely equitable interests: see Wms. R. P. 535.

Severance of the legal and equitable estates usually occurs by means of a mortgage or settlement, but may also happen where a conveyance which passes the legal estate is invalid in equity, or where an instrument which confers an equitable title does not pass the legal estate: see 3 Pres. 257.

The Judicature Acts have not abolished the distinction between legal and equitable estates: *Joseph* v. *Lyons*, 15 Q. B. D. 280.

The legal estate in freeholds and leaseholds can only be conveyed *inter vivos* by deed: see 8 & 9 Vict. c. 106, ss. 2, 3. Thus, a reconveyance of a legal mortgage is ineffectual if not under seal: *Nat. Prov. Bk. of England* v. *Jackson*, 33 Ch. D. 1; but an equitable mortgage may be effectually discharged by an indorsed receipt: see *Jared* v. *Clements*, (1902) 2 Ch. 402.

Where registration of title under the Land Transfer Acts, 1875 and 1897, is compulsory, a purchaser of freeholds, or of leaseholds having 40 years to run or two lives to fall in, does not acquire the legal estate until he is registered as proprietor: 60 & 61 Vict. c. 65, s. 20; L. T. Rules, 1903, rr. 68, 69.

A written contract or conveyance not under seal passes an equitable interest to a purchaser: Wms. R. P. 187; *Holroyd* v. *Marshall*, 10 H. L. C. 191; but a legal owner can only make a valid gift or voluntary settlement by a conveyance under seal or written declaration of trust: *Richards* v. *Delbridge*, L. R. 18 Eq. 11.

The deposit of title-deeds to secure a loan, creates an equitable charge, subject to the terms of any memorandum of deposit: see *Shaw* v. *Foster*, L. R. 5 H. L. 321. But the mere delivery of title-deeds by way of gift does not pass any interest: *Re Richardson*, 30 Ch. D. 396; *Re Hancock*, 36 W. R. 710.

The legal estate in copyholds only passes by admittance: Scriv. 122; see *Hall* v. *Bromley*, 35 Ch. D. 642.

A covenant to surrender passes an equitable interest to a purchaser, but cannot be enforced by a volunteer, unless accompanied by a written declaration of trust: *Steele* v. *Waller*, 28 Beav. 466.

The legal estate can only be transferred by the person in whom it is vested, except in the following cases:—

(1) Under a common law authority given by will: see 2 Pres. 247; and see *post*, p. 104.

(2) Under a power to appoint a use: see 2 Pres. 246; and see *post*, p. 71.

(3) Under a statutory power: see 2 Pres. 247; and see *post*, pp. 65, 99, 105, 110.

All estates created (except under a power) by a person having only an equitable interest are equitable: 2 Pres. 257; and if he subsequently acquires the legal estate it will not pass by estoppel, unless the conveyance contained a precise averment that the grantor had the legal estate: *Gen. Finance, &c. Co.* v. *Liberator, &c. Soc.*, 10 Ch. D. 15.

A decree of the Court of Chancery or judgment of the Supreme Court in general operates only on the equitable ownership: see 3 Pres. 133. In order to pass the legal estate, there must be a conveyance or vesting order: see *Clark* v. *Malpas*, 31 L. J. Ch. 696.

Exception:—A decree for rectification of a deed where property has been omitted, is sufficient to pass the legal estate: *White* v. *White*, L. R. 15 Eq. 247.

MERGER.

Merger.

When the legal estate and the whole equitable interest unite in the same person, the equitable interest merges in the legal estate: 2 Pres. 235; *Re Douglas*, 28 Ch. D. 327. So, if equitable tenants in common take a conveyance of the legal estate as joint tenants, the tenancy in

common ceases: *Re Selous*, (1901) 1 Ch. 921. But a legal estate cannot merge in an equitable interest: 2 Pres. 12; see *Belaney* v. *Belaney*, L. R. 2 Ch. 138.

If a base fee unites with the reversion in fee, it does not merge but becomes enlarged into a fee simple: 3 & 4 Will. IV. c. 74, s. 39.

An estate tail never merges: Wms. R. P. 361.

When a life estate and the immediate reversion in fee or in tail vest in the same person, the life estate merges in the reversion: Burton, 244.

So, a term in general merges if it vests in the person who holds the immediate reversion, whether freehold or leasehold: 2 Pres. 13; even though the reversion be of shorter duration: *Stephens* v. *Bridges*, 6 Mad. 66.

But if a joint-tenant of a term acquires the whole fee, his share only of the term merges; and if a joint-tenant of the fee acquires the whole term, it is a question of intention whether the term merges as to the whole or as to part only: Burton, 245.

Exceptions:—

(1) There is no merger in equity (*a*) where it would be contrary to the intention: *Snow* v. *Boycott*, (1892) 3 Ch. 110; *Thellusson* v. *Liddard*, (1900) 2 Ch. 635; and see *Ingle* v. *Vaughan Jenkins*, (1900) 2 Ch. 368; or (*b*) where one of the interests is held *in autre droit*: *Chambers* v. *Kingham*, 10 Ch. D. 743.

(2) Since the 1st of November, 1875, there is no merger 'by operation of law only' if the beneficial interest would not be merged in equity: Jud. Act, 1873, s. 25 (4); 37 & 38 Vict. c. 83, s. 2; see *Snow* v. *Boycott*, (1892) 3 Ch. 110; *Capital, &c. Bk.* v. *Rhodes*, (1903) 1 Ch. 631; *Lea* v. *Thursby*, (1904) 2 Ch. 57.

(3) A term does not merge where an intermediate term is vested in a third person: Burton, 294; but a reversionary term (*i.e.*, one to commence *in futuro*) neither causes nor prevents merger: *Hyde* v. *Warden*, 3 Ex. D. 84.

Rule in Shelley's case.

Whenever in the same instrument there is a gift to a person for life and also a gift to his heirs or the heirs of his body, the different estates coalesce (provided they are both legal or both equitable), and vest the fee simple or fee tail in the donee, subject to any intermediate estates: 2 Pres. 432; see *Richardson* v. *Harrison*, 16 Q. B. D. 85; *Re Allsop & Joy*, 61 L. T. 213.

This rule (called the rule in Shelley's case) applies to gifts by will as well as by deed: *Re White & Hindle*, 7 Ch. D. 201; to copyholds as well as to freeholds: Tud. L. C. 341; and as to its application to leaseholds, see *Comfort* v. *Brown*, 10 Ch. D. 146.

The rule does not apply if the particular estate is for years only: *Coape* v. *Arnold*, 4 D. M. & G. 574; *Milman* v. *Lane*, (1901) 2 K. B. 745.

The rule, being a rule of law and not of construction, is not excluded by a manifest intention that the heirs are to take as purchasers: *Van Grutten* v. *Foxwell*, (1897) A. C. 658; although it may be excluded if the context clearly shows that the word 'heirs' is used in a restricted sense: *Evans* v. *Evans*, (1892) 2 Ch. 173.

Merger of charge.

Where a charge vests in an owner in fee by operation of law, it merges, if merger is for the owner's benefit: *Re French-Brewster*, (1904) 1 Ch. 713.

Where a charge is paid off by the owner in fee or in tail, it merges, unless a contrary intention is shown; but if paid off by a life tenant, merger is not presumed: Tud. L. C. 250, 253; see *Re Pride*, (1891) 2 Ch. 135.

DEFEASIBLE ESTATES.

Defeasible estates.

As a rule, if a person once conveys away his whole estate, the conveyance will not be defeated by his subsequent grant or bankruptcy.

Exceptions:—

Power of revocation.

(1) A grant in which a power of revocation is reserved

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may be defeated by a subsequent grant: Sug. 721; see *Re Marsh & Granville*, 24 Ch. D. 11.

Voluntary conveyance.

(2) A voluntary conveyance of real estate might before the 29th of June, 1893, have been defeated by a subsequent conveyance to a purchaser or mortgagee: 27 Eliz. c. 4; *Dolphin* v. *Aylward*, L. R. 4 H. L. 486; provided the want of consideration had not been supplied in the meantime: *Clarke* v. *Willott*, L. R. 7 Ex. 313; but assignments of leaseholds to which liability attached were not deemed voluntary within the Act: *Price* v. *Jenkins*, 5 Ch. D. 619; *Harris* v. *Tubb*, 42 Ch. D. 79; and the Act did not apply to conveyances to charities: *Ramsay* v. *Gilchrist*, (1892) A. C. 412.

A conveyance for value made on or after the 29th of June, 1893, does not defeat a prior voluntary conveyance: 56 & 57 Vict. c. 21, ss. 2, 3.

Voluntary settlement.

(3) A voluntary settlement cannot be revoked if no power of revocation is reserved: *Mallot* v. *Wilson*, (1903) 2 Ch. 494; but if made by a trader, or since the 1st of January, 1884, by any person, may in certain cases be defeated by the settlor becoming bankrupt within 10 years: see B. Act, 1869, s. 91; B. Act, 1883, s. 47; *Ex parte Todd*, 19 Q. B. D. 186; subsequent incumbrances being (it seems) accelerated: *Sanguinetti* v. *Stuckey's Bkg. Co.*, (1895) 1 Ch. 176. But purchasers before the bankruptcy from persons claiming under the settlement are protected: *Re Carter & Kenderdine*, (1897) 1 Ch. 776 (overruling *Re Briggs & Spicer*, (1891) 2 Ch. 127). Settlements of leaseholds are within the Act: *Ex parte Hillman*, 10 Ch. D. 622.

Fraudulent settlement.

(4) A settlement fraudulent against creditors is avoided by 13 Eliz. c. 5: see *Re Maddever*, 27 Ch. D. 523; except as to any interest acquired by a purchaser for value without notice: *Halifax, &c. Co.* v. *Gledhill*, (1891) 1 Ch. 31.

(5) A settlement made in consideration of an intended marriage, may be avoided by the marriage not taking place: *Bond* v. *Walford*, 32 Ch. D. 238; or being invalid: *Pawson*

v. *Brown*, 13 Ch. D. 202; *Phillips* v. *Probyn*, (1899) 1 Ch. 811.

Creditors' deed.

(6) An assignment of a man's property for the benefit of his creditors, being an act of bankruptcy (B. Act, 1883, s. 4), is liable to be avoided by the bankruptcy of the grantor if the petition is presented within three months (s. 43): and if made since the 1st of January, 1888 (otherwise than in pursuance of the bankruptcy law), is void unless stamped and registered within seven days pursuant to the Deeds of Arrangement Act, 1887: 50 & 51 Vict. c. 57, ss. 5, 6. The Act does not apply to companies: *Re Rileys*, (1903) 2 Ch. 590.

Company's creditors' deed.

(7) An assignment by a joint stock company of all its estate and effects for the benefit of all its creditors is void: 25 & 26 Vict. c. 89, s. 164.

Company's mortgage.

(8) A mortgage created by a joint stock company since the 1st of January, 1901, for securing debentures or as a floating charge, is void against the liquidator and creditors, unless filed with the Registrar of Joint Stock Companies within 21 days: 63 & 64 Vict. c. 48, s. 14; see *Cornbrook Brew. Co.* v. *Law Debre. Corp.*, (1904) 1 Ch. 103; *Illingworth* v. *Houldsworth*, (1904) A. C. 355.

Unregistered conveyance.

(9) An unregistered conveyance of property in Middlesex or Yorkshire may be defeated by a subsequent conveyance duly registered: see Sug. 727; York Reg. Act, 1884, s. 14; *Battison* v. *Hobson*, (1896) 2 Ch. 403; but see *ante*, p. 23.

Fraud and forgery.

(10) A deed obtained by fraud is not always defeasible: *Lloyd's Bk.* v. *Bullock*, (1896) 2 Ch. 192; *King* v. *Smith*, (1900) 2 Ch. 425. But a forged deed is a nullity: *Re Cooper*, 20 Ch. D. 611.

Conveyance in mortmain.

A conveyance to a corporation in mortmain, otherwise than under the authority of a licence from the Crown or of a statute, is a cause of forfeiture to the Crown or mesne lord: Burton, 68; 51 & 52 Vict. c. 42, s. 1.

Conveyance to charity.

A conveyance to trustees for a charity is in general

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void, unless it is attested by two witnesses and enrolled in Chancery or the Central Office within 6 months, and complies with the other requirements of the Mortmain Acts. It is also avoided by the death of the grantor within a year, unless made in good faith for full and valuable consideration: see 9 Geo. II. c. 36; 51 & 52 Vict. c. 42, s. 4; Tud. L. C. 544—553; *Wickham* v. *Bath*, L. R. 1 Eq. 17; but a title may be acquired under the Statutes of Limitations: *Churcher* v. *Martin*, 42 Ch. D. 312.

FUTURE ESTATES.

Future estates.

In determining as to the validity of a future estate, it must be ascertained whether it is vested or contingent, and if contingent, whether a remainder or an executory interest.

Vested or contingent.

No limitation is deemed contingent if it can be construed as vested: 2 Pres. 92; see *Muskett* v. *Eaton*, 1 Ch. D. 435; *Leadbeater* v. *Cross*, 2 Q. B. D. 18.

Postponement of enjoyment does not import contingency: *Holland* v. *Wood*, L. R. 11 Eq. 91.

Remainder or executory interest.

A limitation *in futuro* of freeholds can only take effect as a remainder, unless contained in a will, or created by way of use in a deed: and in either of those cases, if it can possibly take effect as a remainder, it is so treated, and cannot operate as an executory interest: 2 Pres. 117; *Brackenbury* v. *Gibbons*, 2 Ch. D. 417; *Symes* v. *Symes*, (1896) 1 Ch. 272; but if it cannot possibly take effect as a remainder, it operates as an executory interest: *Re Lechmere & Lloyd*, 18 Ch. D. 524; *Re Wrightson*, (1904) 2 Ch. 95.

A limitation once operating as a remainder can never become an executory interest: 2 Pres. 172. But an executory interest may sometimes become a remainder by the vesting of a prior estate: see 2 Pres. 117.

Remainder, when valid.

A limitation can only take effect as a remainder when the following conditions are fulfilled:—

(1) There must be a prior vested particular estate,

which, in the case of a contingent remainder, must be of freehold;

(2) There must be no interval between the determination of the particular estate and the commencement of the remainder;

(3) It must not defeat the particular estate;

(4) It must not be subsequent to a limitation in fee simple: 2 Pres. 90, 91.

When any of these conditions is violated, the limitation will be void, unless contained in a will or created by way of use in a deed, in which case it will take effect as an executory interest, provided it does not contravene the rule against perpetuities: 1 Pres. 114.

Examples:—

(1) Devise to trustees for 120 years if A. so long live, and subject thereto to B. for life and then to the children of A. and B. living at the death of the survivor in fee: if A. survives B., the remainder fails for want of a freehold estate to support it: *Cunliffe* v. *Brancker*, 3 Ch. D. 393.

(2) Devise to A. for life and then to such of his children as attain 21 before or after his death in fee: the gift to the children cannot take effect as a remainder, because of the possible interval at A.'s death, but operates as an executory interest which is valid as to all, including children under age at A.'s death: *Re Lechmere & Lloyd*, 18 Ch. D. 524; *Miles* v. *Jarvis*, 24 Ch. D. 633; *Dean* v. *Dean*, (1891) 3 Ch. 150.

(3) Devise to A. for life but if he alienates then to B.: the gift over cannot operate as a remainder by reason of the defeasance, but gives B. a valid executory interest: *Blackman* v. *Fysh*, (1892) 3 Ch. 209.

(4) Grant to A. and his heirs to the use of B. and his heirs until B.'s marriage, and then to other uses: the limitations after B.'s marriage cannot take effect as remainders, being subsequent to a limitation in fee, but may be valid as executory interests: Wms. R. P. 368.

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Copyholds.

Limitations *in futuro* of copyholds take effect in the same way as similar limitations of freeholds: Wms. R. P. 480.

Destruction of contingent remainders.

Since the 1st of January, 1845, contingent remainders have been capable of taking effect, notwithstanding the determination by forfeiture, surrender, or merger of the prior estate: 8 & 9 Vict. c. 106, s. 8.

But a legal contingent remainder created before the 2nd of August, 1877, is liable to be defeated by the particular estate expiring before the remainder becomes vested: Wms. R. P. 362.

Examples:—

(1) Remainder after A.'s life estate, to such of B.'s children as survive B., fails if A. dies in B.'s lifetime: *Price* v. *Hall*, L. R. 5 Eq. 399.

(2) Remainder after A.'s life estate, to such of B.'s children as attain 21, fails as to any child under age at A.'s death: *Brackenbury* v. *Gibbons*, 2 Ch. D. 417; *Blackman* v. *Fysh*, (1892) 3 Ch. 223; *Symes* v. *Symes*, (1896) 1 Ch. 272.

An equitable contingent remainder is not liable to be defeated by the expiration of the particular estate, whether the legal estate is vested in trustees or outstanding in a mortgagee: 2 Pres. 148; *Abbiss* v. *Burney*, 17 Ch. D. 211; *Re Brooke*, (1894) 1 Ch. 43; *Astley* v. *Micklethwait*, 15 Ch. D. 59; nor is it destroyed by the legal estate being got in either before or after the 2nd of August, 1877: *Re Freme*, (1891) 3 Ch. 167.

Copyholds.

Contingent remainders of copyholds are not destroyed by the surrender, forfeiture, or merger of the prior particular estate, but if created before the 2nd of August, 1877, may be defeated by its expiration before they become vested, unless merely equitable interests: 2 Pres. 149; see *Pickersgill* v. *Grey*, 30 Beav. 352.

40 & 41 Vict. c. 33

A contingent remainder of freeholds or copyholds created since the 2nd of August, 1877, does not fail by

the determination of the prior particular estate if it would have been valid as an executory interest: 40 & 41 Vict. c. 33.

Remoteness.

A legal remainder after the life estate of a person *in esse*, can never be too remote, as it must either fail or take effect at the expiration of the life estate: 2 Pres. 148; see *Re Frost*, 43 Ch. D. 253; *Hancock* v. *Watson*, (1902) A. C. 21.

Example:—Remainder after A.'s life estate, to such of his children as attain 25, takes effect as to children who have attained 25 at A.'s death: *Symes* v. *Symes*, (1896) 1 Ch. 272.

A legal remainder to the child of an unborn person to whom a prior life estate is limited, is void, and all subsequent limitations over are also void: 2 Pres. 114; *Whitby* v. *Mitchell*, 44 Ch. D. 85; see *Re Bowles*, (1902) 2 Ch. 650.

Cy près.

Exception:—In the case of a will, a limitation to an unborn person for his life with remainder to his children in tail, gives the unborn person an estate tail: Wms. R. P. 402; see *Hampton* v. *Holman*, 5 Ch. D. 183.

A remainder after an unborn person's life estate to any one but his child is good, provided it does not contravene the rule against perpetuities: see *Stuart* v. *Cockerell*, L. R. 7 Eq. 363; *Wainwright* v. *Miller*, (1897) 2 Ch. 255.

Rule against perpetuities.

Legal and equitable remainders and executory interests which are not so limited as necessarily to vest or fail of effect within lives in being and 21 years, are void for perpetuity: 2 Pres. 152; *Re Frost*, 43 Ch. D. 246: *Sibley* v. *Ashforth*, (1905) 1 Ch. 535: a child *en ventre sa mère* being treated as a life in being: *Re Wilmer*, (1903) 2 Ch. 411. But the rule does not apply to limitations in defeasance of or subsequent to an estate tail: 1 Pres. 131; *Heasman* v. *Pearse*, L. R. 7 Ch. 275.

Examples:—

(1) Gift to A. for life, with remainder to any husband

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she may marry for life, with remainder to A.'s children living at the death of the survivor; the ultimate remainder is void: *Re Frost*, 43 Ch. D. 246.

(2) Devise upon trust for A. for life and after his death to convey the fee to such son of B. as first attains 25: the executory devise is void: *Abbiss* v. *Burney*, 17 Ch. D. 211.

So a general power of appointment is void if given to a person who may not be ascertained within the limits of the rule: *Re Hargreaves*, 43 Ch. D. 401; and a power given to an unborn person to appoint by will is void: *Morgan* v. *Gronow*, L. R. 16 Eq. 1; but limitations in default of appointment are not affected by the invalidity of the power: *Re Abbott*, (1893) 1 Ch. 54.

A trust for sale may be void if directed to arise after the period allowed by the rule: *Goodier* v. *Edmunds*, (1893) 3 Ch. 455; but the beneficiaries do not forfeit their interests: *Re Daveron*, (1893) 3 Ch. 421; provided they are ascertainable within due limits: *Re Wood*, (1894) 3 Ch. 381; but take the property as real estate: *Re Appleby*, (1903) 1 Ch. 565.

A restraint on anticipation may be void for transgressing the rule: see *Re Ferneley*, (1902) 1 Ch. 543.

The rule applies also to executory interests created by covenant: *S. W. R. Co.* v. *Gomm*, 20 Ch. D. 562; *Trevelyan* v. *Trevelyan*, 53 L. T. 853; or option of purchase: *Woodall* v. *Clifton*, 53 W. R. 203; or common law condition: *Re Hollis' Hosp. and Hague*, (1899) 2 Ch. 540; or agreement, unless authorised by a special Act: see *Manchester S. C. Co.* v. *Manchester R. Co.*, (1901) 2 Ch. 37.

If a limitation is void for perpetuity, subsequent limitations are also void: 2 Pres. 170; but a limitation having a double aspect or contingency, may be good in one event though void in the other: 2 Pres. 171; see *Monypenny* v. *Dering*, 2 D. M. & G. 145; *Evers* v. *Challis*, 7 H. L. C. 531; provided it is expressed in an alternative form: *Re*

Harvey, 39 Ch. D. 289; *Re Bence*, (1891) 3 Ch. 242; see *Hancock* v. *Watson*, (1902) A. C. 14.

Limitations void in their creation cannot become good by subsequent events: 2 Pres. 172; but in the case of a limitation under a will, the time to be regarded is the death of the testator: *Re Mervin*, (1891) 3 Ch. 204; *Re Wood*, (1894) 3 Ch. 381.

Destruction of executory interests.

An executory interest limited after an estate tail is liable to be defeated by the entail being barred: 2 Pres. 121; 3 & 4 Will. IV. c. 74, s. 15; *Milbank* v. *Vane*, (1893) 3 Ch. 79; but with that exception, an executory interest cannot be destroyed by the owner of a prior estate: see *Re Barber*, 18 Ch. D. 624.

Limitations in default of issue.

Executory limitations over on default or failure of issue of a person entitled in fee, or for years, or for life, if contained in instruments coming into operation after the 31st of December, 1882, become void if and as soon as any issue attain 21: Conv. Act, 1882, s. 10: see *Re Booth*, (1900) 1 Ch. 768.

Repugnancy.

Executory limitations over in the event of an owner in fee alienating or becoming bankrupt, or on his dying intestate or without having alienated, are void for repugnancy: see p. 55.

CHAPTER IV.

POWER OF DISPOSITION AND DEVOLUTION.

Chap. IV.

Power of disposition and devolution.

Two questions constantly arise on an abstract:—

(1) Whether a grantor has power to dispose of the property in the way he purports to do;

(2) How an estate devolves on the death of the owner without having exercised his power of disposition.

All estates and interests belonging to persons *sui juris* are in general assignable, including contingent remainders and executory interests: see 8 & 9 Vict. c. 106, s. 6; and although a mere *spes successionis*, such as the expectancy of an heir, cannot be assigned at law; an assignment for value is enforceable in equity: 3 Pres. 273; see *Re Parsons*, 45 Ch. D. 51; except in the case of an expectant interest in tail: see 3 & 4 Will. IV. c. 74, s. 20; or a married woman's expectancy: see *Allcard* v. *Walker*, (1896) 2 Ch. 369. But a voluntary assignment of a mere expectancy is not enforceable: *Re Ellenborough*, (1903) 1 Ch. 697.

The general rule is that a person cannot grant a larger estate than he has: 3 Pres. 25. Thus a conveyance by a person entitled in default of appointment does not pass an estate afterwards appointed to him under an overriding power: *Lovett* v. *Lovett*, (1898) 1 Ch. 82.

Accordingly, a conveyance must not be assumed to pass an estate merely because it purports to do so; but the power of disposition of the grantor must be considered.

All estates and interests which devolve on the heir or executor are in general devisable by will: see 1 Vict. c. 26, s. 3; *Pemberton* v. *Barnes*, (1899) 1 Ch. 544.

It is proposed to deal separately with the power of

disposition possessed by tenants in fee simple, in tail, for life, *pur autre vie*, and for years, and donees of powers of appointment, as well as the devolution of their estates at death; and then to consider the modifications caused by incapacity and co-ownership, and the powers of mortgagees, executors and administrators, trustees, building societies, friendly societies, joint stock companies and railway companies.

SECT. I.

TENANTS IN FEE.

Tenant in fee; power of disposition.

A beneficial owner in fee simple of freeholds can convey the fee or any less estate *inter vivos*, or devise it by will: see 1 Pres. 377; Wms. R. P. 65; but if the owner was married on or before the 1st of January, 1834, any disposition made by him is subject to his wife's right to dower. See p. 61.

Copyholds.

An owner in fee simple of copyholds has full power of disposition *inter vivos* or by will: Wms. R. P. 456; but, in the absence of a special custom, may forfeit his estate by granting a lease for more than a year without the lord's licence: Scriv. 208.

Condition restraining alienation.

A condition in absolute restraint of alienation, attached to an estate in fee simple, is void for repugnancy: *Re Rosher*, 26 Ch. D. 801. So is a condition determining it on bankruptcy: *Re Machu*, 21 Ch. D. 838.

There is some doubt as to how far a partial restraint on alienation is valid: compare *Re Macleay*, L. R. 20 Eq. 186, and *Re Rosher*, 26 Ch. D. 801; and see 2 Pres. 194; Tud. L. C. 517.

Repugnant gift over.

An estate in fee simple may be determined by a gift over in the nature of an executory interest: see p. 49. But a gift over on alienation or bankruptcy is void for

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repugnancy: *Corbett* v. *Corbett*, 14 P. D. 7; *Re Dugdale*, 38 Ch. D. 176. So is a gift over on death intestate, or without having alienated: *Barton* v. *Barton*, 3 K. & J. 512; *Shaw* v. *Ford*, 7 Ch. D. 669; and see *Re Parry & Daggs*, 31 Ch. D. 130. As to the effect of a name and arms clause, see *Musgrave* v. *Brooke*, 26 Ch. D. 792; *Re Greenwood*, (1903) 1 Ch. 749.

Devolution on death.

L. T. Act, 1897.

On the death of a beneficial owner in fee simple before 1898, the estate, if devised by his will, passed to the devisee, who could alone confer a title. But in the case of an owner dying since the 1st of January, 1898, the estate (notwithstanding any devise) vests, like a chattel real, in his executor (60 & 61 Vict. c. 65, s. 1), and only the beneficial interest, subject to debts and administration expenses, passes to the devisee (s. 2): the executor's assent or conveyance being necessary to vest the estate in him (s. 3): see *Re Pix*, (1901) W. N. 165.

It seems doubtful, having regard to sect. 2, whether one of several executors can assent to a devise of real estate (see *post*, p. 105); and a purchaser from the devisee should require either the written assent of all, or (preferably) their concurrence in the conveyance.

An assent does not require a stamp unless under seal: *Kemp* v. *I. R. Commissioners*, (1905) 1 K. B. 581.

Descent before 1898.

On the death intestate of a beneficial owner in fee of freeholds before 1898, the estate descended, subject to the widow's rights (see p. 61), to his heir-at-law, except in the following cases:—

(1) Where the intestate inherited the property: see *infrà*.

(2) Where the custom of Gavelkind or Borough-English applied: see p. 60.

(3) Where the intestate had died since the 1st of September, 1890, leaving a widow but no issue, and the net value of his real and personal estate did not exceed £500: see p. 60.

L. T. Act, 1897.

On the death intestate of a beneficial owner in fee simple

since the 1st of January, 1898, the estate vests like a chattel real in his administrator on administration being granted: 60 & 61 Vict. c. 65, s. 1; and his title seems to relate back to the death: *Re Pryse*, (1904) P. 301; but the beneficial interest (subject to debts and administration expenses and the widow's rights) descends, as before, to the heir (s. 2): a conveyance from the administrator being necessary to vest the estate in him (s. 3).

Rules of descent.

The following rules of descent apply in cases of death since the 1st of January, 1834:—

If the intestate inherited the property, the descent is traced from the 'purchaser,' *i.e.*, the last owner who did not inherit: 3 & 4 Will. IV. c. 106, ss. 1, 2; see Dart, 376. But if an heir takes land by devise, or if he conveys land which he has inherited to himself or his own heirs, he becomes a 'purchaser': see s. 3; whether the devise be to him *nominatim*, or to the testator's right heirs: *Owen* v. *Gibbons*, (1902) 1 Ch. 636; and see *Bickley* v. *Bickley*, L. R. 4 Eq. 216.

Where a person has, since the 1st of January, 1834, taken by purchase under a limitation to the heirs of his ancestor, the descent is traced as if the named ancestor had been the 'purchaser' (s. 4): see *Moore* v. *Simkin*, 31 Ch. D. 95.

If the intestate acquired the legal estate and equitable interest as heir of different persons, the descent follows the legal estate: *Re Douglas*, 28 Ch. D. 327.

Where there is a total failure of heirs of the 'purchaser' the descent is traced from the person last entitled to the land, as if he had been the 'purchaser': 22 & 23 Vict. c. 35, s. 19.

No one can take as heir unless he survives the ancestor: see Wms. R. P. 84.

The other leading rules of descent are as follows:—

(1) The estate descends first to the issue;

(2) Males take before females in equal degree;

(3) Of males in equal degree, the eldest alone inherits; but females in equal degree inherit all together;

(4) Issue of a deceased person represent their ancestor *in infinitum* : Wms. R. P. 221—225;

(5) On failure of issue, the estate descends to the nearest lineal ancestor; brothers and sisters tracing their descent through their parent: 3 & 4 Will. IV. c. 106, ss. 5, 6; Wms. R. P. 227;

(6) The half blood inherit next after the whole blood of the same degree and their issue, if the common ancestor is a male, and next after the common ancestor, if a female (s. 9); Wms. R. P. 228.

Order of heirship.

Accordingly, the nearer heirs of the 'purchaser' take in the following order:—

A. Where the 'purchaser' has children:—

(1) The eldest son, if he survives, is heir to the exclusion of the others.

(2) If the eldest son is dead, without leaving issue who survive the 'purchaser,' the second son inherits.

(3) So on with the other sons in order of seniority, including sons by a subsequent marriage.

(4) If there is no son, or if all the sons are dead without leaving issue who survive the 'purchaser,' the daughters all inherit together, including daughters by a subsequent marriage.

(5) If any son or daughter is dead, leaving issue who survive the 'purchaser,' they inherit in the place of their parent, taking as between themselves in the same order as the children of the 'purchaser.'

B. Where the 'purchaser' has no children, or all his children are dead without leaving issue who survive him:—

(1) The father, if he survives, is heir.

(2) If the father is dead, having had other children

by the same marriage, they and their issue inherit in the following order:—

(i) The 'purchaser's' eldest brother if he survives.

(ii) If the eldest brother is dead without leaving issue who survive the 'purchaser,' the second brother inherits.

(iii) So on, with the other brothers in order of seniority.

(iv) If there is no brother, or if all the brothers are dead without leaving issue who survive the 'purchaser,' the sisters all inherit together.

(v) If any brother or sister is dead leaving issue who survive the 'purchaser,' they inherit in the place of their parent, taking as between themselves in the same order as the children of the 'purchaser.'

(3) If there is no brother or sister of the whole blood, or if all have died without leaving issue who survive the 'purchaser,' the father's issue by any other marriage inherit in the same order.

(4) If the father is dead, and the 'purchaser,' has no child, brother, or sister, or if they are all dead without leaving issue who survive him, the paternal grandfather inherits, or if he is dead, the paternal uncles and their issue in the same order as brothers and their issue, and in default of them, the paternal aunts and their issue.

For the order in which more remote heirs inherit, see 3 & 4 Will. IV. c. 106, ss. 7, 8; Wms. R. P. 227—230.

Gavelkind.

Land in Kent is presumed to be of gavelkind tenure, if not shown to be disgavelled: Cov. 172; Dart, 362.

Where the custom of Gavelkind prevails, primogeniture is excluded, and the estate descends to all the sons equally; the issue of a deceased son taking his share by representation. In default of sons, all the daughters

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inherit together: Cov. 172. The same rule prevails among collaterals, so that brothers all inherit together; the issue of a deceased brother taking his share by representation: Wms. R. P. 59; *Hook* v. *Hook*, 1 H. & M. 43: and so with more remote collaterals: *Re Chenoweth*, (1902) 2 Ch. 488. But under a gift of gavelkind land to a man's right heirs, the common law heir takes: *Garland* v. *Beverley*, 9 Ch. D. 213.

Borough-English.

Where the custom of Borough-English applies, the estate descends to the youngest son to the exclusion of all the other children; but the custom does not usually extend to collaterals: Tud. L. C. 191.

Copyholds.

Copyholds of inheritance descend according to the custom prevailing in the manor. In cases not provided for by the custom, the descent is according to the common law: *Re Smart*, 18 Ch. D. 165.

The devolution is not affected by the Land Transfer Act, 1897, 'in any case in which an admission or any act by the lord is necessary to perfect the title of a purchaser from the customary tenant': 60 & 61 Vict. c. 65, s. 1. Equitable interests in copyholds have been held to be within the Act: *Re Somerville & Turner*, (1903) 2 Ch. 583; *sed. qu.*

Intestates' Estates Act, 1890.

Where a man dies intestate after the 1st of September, 1890, leaving a widow but no issue, if the net value of his real and personal estate does not exceed £500, the whole belongs to the widow absolutely and exclusively; or if the net value exceeds £500, she is entitled to a charge for that amount with interest, in addition to her interest and share in the residue: 53 & 54 Vict. c. 29, ss. 1—4. The Act does not apply to partial intestacy: *Re Twigg*, (1892) 1 Ch. 579.

Escheat

On the death of a person intestate and without an heir, estates of which he is beneficially seised in fee, escheat to

the lord of whom they are held: see Wms. R. P. 230; and this seems not to be affected by the Land Transfer Act, 1897: see *Re Hartley*, (1899) P. 40.

Equitable estates did not escheat before the 14th of August, 1884; but on the failure of heirs, the trustee became absolutely entitled: Wms. R. P. 187; *Gallard* v. *Hawkins*, 27 Ch. D. 298; see *Re Lashmar*, (1891) 1 Ch. 258. Since that day, however, equitable estates have been liable to escheat: 47 & 48 Vict. c. 71, s. 4: see *Re Wood*, (1896) 2 Ch. 596. Intestates' Estates Act, 1884

If an owner in fee or in tail of freeholds was married on or before the 1st of January, 1834, his widow is entitled to dower, except in the following cases:— Dower Old law.

(1) Where the owner has not at any time during the coverture been solely seised of the legal estate in possession;

(2) Where the estate is one which his issue by her could not by possibility inherit;

(3) Where the right has been barred by jointure before marriage: see 3 Pres. 367; Wms. R. P. 317;

(4) Where she has released it by acknowledged deed: see *Dawson* v. *Bk. of Whitehaven*, 6 Ch. D. 218.

In the case of a person married since the 2nd of January, 1834, dower attaches to both his legal and equitable estates of inheritance in possession: 3 & 4 Will. IV. c. 105, s. 2; see *Re Michell*, (1892) 2 Ch. 87; notwithstanding uses to bar dower: *Clarke* v. *Franklin*, 4 K. & J. 266; but it may be excluded by:— Dower Act.

(1) Disposition in his lifetime or by will (ss. 4, 5): see *Lacey* v. *Hill*, L. R. 19 Eq. 346;

(2) Declaration barring dower contained in a deed or will after the Act (ss. 6, 7): *Fry* v. *Noble*, 7 D. M. & G. 687; or

(3) Devise of real estate to his widow (s. 9): see Sug. 458; *Re Thomas*, 34 Ch. D. 166.

In the case of gavelkind land, the right to dower is Gavelkind.

limited to a moiety and ceases on re-marriage: Wms. R. P. 316. The Dower Act applies: *Farley* v. *Bonham*, 2 J. & H. 177.

Freebench.

In the case of copyholds, the right to freebench depends on the custom of the manor. It is in general defeated by the owner's alienation in his lifetime or by will: 3 Pres. 366; Wms. R. P. 483; *Lacey* v. *Hill*, L. R. 19 Eq. 346; and does not attach to equitable interests: 3 Pres. 367. The Dower Act does not apply: *Smith* v. *Adams*, 5 D. M. & G. 712.

Divorce.

The right to dower is lost by divorce: *Frampton* v. *Stephens*, 21 Ch. D. 164.

TENANTS IN TAIL.

Tenant in tail.

Power of disposition.

A tenant in tail of freeholds in possession can bar the entail and convey the fee simple or any less estate by a deed enrolled in Chancery within six months after execution, but cannot devise his estate by will, or bind it by contract (except under the Settled Land Act, 1882), even if the estate be merely equitable: 3 & 4 Will. IV. c. 74, ss. 15, 40, 41, 47: see Wms. R. P. 103. As to expectant interests, see p. 54.

All remainders and estates in defeasance of the estate tail are barred by the disentailing deed: s. 15; *Milbank* v. *Vane*, (1893) 3 Ch. 79.

If the owner was married on or before the 1st of January, 1834, the grantee takes subject to the wife's right to dower: see p. 61.

A mere declaration of trust is not sufficient to bar an estate tail: *Green* v. *Paterson*, 32 Ch. D. 95; nor is a conveyance which fails of effect by the disclaimer of the grantee: *Peacock* v. *Eastland*, L. R. 10 Eq. 17.

Consent of protector.

Where an estate tail is preceded by a life estate under the same settlement, the consent of the protector must be given by the disentailing deed or by a previous or contemporaneous deed enrolled with or before the disentailing

deed (ss. 22, 42, 46); otherwise, only a base fee will be created, determinable by the failure of issue of the tenant in tail, and the remainders and reversion will not be barred; see s. 34: Wms. R. P. 100. The base fee may be enlarged into a fee simple by an enrolled deed, but so long as there is a protector, not without his consent: ss. 19, 35, 40, 41; *Re Drummond & Davie*, (1891) 1 Ch. 524. The remainders may also be barred by possession under the base fee for 12 years after the death of the protector: see 37 & 38 Vict. c. 57, s. 6; *Mills* v. *Capel*, L. R. 20 Eq. 692.

Who is protector.

The owner of the prior life estate is generally protector: see ss. 22—31; *Re Dudson*, 8 Ch. D. 628; *Re Ainslie*, 54 L. J. Ch. 8; unless a protector is appointed by the settlor under s. 32: see *Bell* v. *Holtby*, L. R. 15 Eq. 178; *Clarke* v. *Chamberlin*, 16 Ch. D. 176.

Void restriction.

A prohibition against barring the entail is invalid: *Dawkins* v. *Penrhyn*, 6 Ch. D. 318; 4 App. Cas. 51.

Want of enrolment.

The conveyance of a tenant in tail if not enrolled within six months has no operation under the Act (s. 41), and only passes an estate for his life (except under the Settled Land Act, 1882): see *Morgan* v. *Morgan*, L. R. 10 Eq. 99.

S. L. Act, 1882.

Since the 1st of January, 1883, a tenant in tail in possession has also had the same statutory power of disposition as a tenant for life under the Settled Land Act, 1882, s. 58: see p. 65.

Copyholds.

In the case of copyholds, a grant to a man and the heirs of his body creates only a conditional fee, unless a custom to entail exists in the manor: 2 Pres. 29; see *Pemberton* v. *Barnes*, (1899) 1 Ch. 544; so that in the absence of such a custom he cannot alienate until after the birth of issue: Scriv. 45.

A legal tenant in tail of copyholds can bar the entail by surrender; entry on the court rolls within six months being substituted for enrolment: 3 & 4 Will. IV. c. 74, ss. 50, 54.

An equitable tenant in tail can bar the entail by surrender or deed entered on the court rolls within six months after execution: ss. 50, 53, 54; *Green* v. *Paterson*, 32 Ch. D. 95.

Where the estate tail is in remainder the consent of the protector has to be entered on the court rolls at the same time or previously: 3 & 4 Will. IV. c. 74, ss. 51—54.

An estate tail may also be barred by enfranchisement: *Re Hart*, 41 Ch. D. 547.

Leaseholds.

In the case of leaseholds, a person who has a *quasi* estate tail is considered as the absolute owner: 2 Pres. 173.

Special estates tail.

Tenants in tail after possibility of issue extinct cannot bar their estates tail: 3 & 4 Will. IV. c. 74, s. 18; and for purposes of title are considered only as tenants for life: 1 Pres. 447; see Wms. R. P. 104. So, estates tail granted by the Crown or Parliament for special services cannot be barred (s. 18): see *Robinson* v. *Giffard*, (1903) 1 Ch. 865.

But since the 1st of January, 1883, they have had, when in possession, the same statutory power of disposition as tenants for life under the Settled Land Act, 1882 (s. 58): see p. 65.

Descent.

On the death of a tenant in tail without having barred the entail, the estate descends to the heirs of the body of the donee in tail, according to the form of the gift: see 3 Pres. 1; and it is conceived that this is not affected by the Land Transfer Act, 1897.

The course of descent is similar to that of an estate in fee simple, subject to the restrictions imposed by the terms of the gift: see Wms. R. P. 225.

Dower.

The heir takes subject to the widow's right to dower (if any) as in the case of a fee simple estate: Wms. R. P. 314; see *ante*, p. 61.

TENANTS FOR LIFE.

Tenant for life.

A tenant for his own life can assign his life estate, but any estate created by him determines on his death, unless created under a power: see Wms. R. P. 116.

Condition restraining alienation.

A condition in restraint of alienation attached to a life estate is in general void for repugnancy: see Tud. L. C. 521. But a conditional limitation until alienation, bankruptcy, or insolvency, and then over is valid: see *Re Machu*, 21 Ch. D. 842; *Nixon* v. *Verry*, 29 Ch. D. 196; *Re Levy*, 30 Ch. D. 119; and a life estate under a will may be determined by a gift over on alienation: *Hurst* v. *Hurst*, 21 Ch. D. 278.

A conditional limitation cutting down the settlor's own estate on alienation may be valid as against particular assigns: *Re Detmold*, 40 Ch. D. 585; but is void as against the trustee in his bankruptcy: *Re Pearson*, 3 Ch. D. 807; see *Re Ashby*, (1892) 1 Q. B. 872; and see *Mackintosh* v. *Pogose*, (1895) 1 Ch. 505.

S. L. Act, 1882.

Since the 1st of January, 1883, a life-tenant in possession of settled land has had power under the Settled Land Act, 1882, to sell the estate subject to the settlement (whatever its date): S. L. Act, 1882, ss. 2, 3; provided there are at the time of completion 'trustees of the settlement' for the purposes of the Act: *Re Fisher & Grazebrook*, (1898) 2 Ch. 660: the purchaser being relieved from inquiring whether the statutory notice has been given (s. 45): see *Marlborough* v. *Sartoris*, 32 Ch. D. 623; *Hatten* v. *Russell*, 38 Ch. D. 334; and see *Mogridge* v. *Clapp*, (1892) 3 Ch. 382.

The price has to be the best that can reasonably be obtained (s. 4); but a *bonâ fide* purchaser is protected from inquiring as to this by sect. 54: see *Hurrell* v. *Littlejohn*, (1904) 1 Ch. 689.

The life-tenant's conveyance by deed, to the extent to which it is expressed or intended to operate under the Act,

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passes the land discharged from the settlement, 'and from all estates, interests, and charges, subsisting or to arise thereunder' (such as jointures and portions not actually raised: see *Re Keck & Hart*, (1898) 1 Ch. 617); but subject to 'estates, interests, and charges having priority to the settlement,' or 'securing money actually raised,' and leases and grants for value (s. 20): see *Re Ailesbury & Iveagh*, (1893) 2 Ch. 345.

The purchase-money has to be paid to the 'trustees of the settlement' or into Court, at the option of the life-tenant (ss. 22, 39): see *Re Garnett Orme & Hargreaves*, 25 Ch. D. 595.

Trustees of the settlement.

The 'trustees of the settlement' are (1) The trustees with present power of sale or of consent to a sale of the settled land (see *Wheelwright* v. *Walker*, 23 Ch. D. 752); or, if none, (2) The persons by the settlement declared to be trustees for the purposes of the Act: S. L. Act, 1882, s. 2 (see *Re Spencer*, (1903) 1 Ch. 75); or, if none, and none have been appointed under sect. 38, (3) Trustees upon trust for sale, or with power of sale or of consent to a sale, of other land in the settlement subject to the same limitations; or, if none, (4) Trustees of a future trust for sale, or with future power of sale or of consent to a sale, of the settled land: S. L. Act, 1890, s. 16 (though the life-tenant be one, and the power only arise on his death: see *Re Jackson*, (1902) 1 Ch. 258).

Compound settlement.

There may be at the same time a settlement consisting of one deed and a compound settlement consisting of several deeds (see *Re Mundy & Roper*, (1899) 1 Ch. 275); and the life-tenant may sell under either: *Re Wimborne & Browne*, (1904) 1 Ch. 537 (explaining *Re Cornwallis West & Munro*, (1903) 2 Ch. 150); even where his life interest is created by the latest deed: *Re Phillimore*, (1904) 2 Ch. 460. But if he sells under the compound settlement, trustees thereof for the purposes of the Act must be appointed: see *Re Ailesbury & Iveagh*, (1893) 2 Ch. 358.

The life-tenant of an undivided share of land can sell without the concurrence of the owners of the other shares: *Cooper* v. *Belsey*, (1899) 1 Ch. 639 (overruling *Re Collinge*, 36 Ch. D. 516).

The principal mansion house and the lands usually occupied therewith cannot be sold without the consent of the 'trustees of the settlement' or an order of Court (s. 15): S. L. Act, 1890, s. 10; but since the 18th of August, 1890, where a house is usually occupied as a farmhouse, or the site of any house and the lands usually occupied therewith do not together exceed 25 acres, it is not deemed a principal mansion house: S. L. Act, 1890, s. 10.

The statutory power cannot be assigned or released: S. L. Act, 1882, s. 50; and any prohibition or limitation against its exercise is void (ss. 51, 52). It continues exercisable notwithstanding any assignment of the life-tenant's estate: *Re Mundy & Roper*, (1899) 1 Ch. 275; but if the assignment is for value, the consent of the assignee must be obtained (s. 50): see *Du Cane & Nettlefold*, (1898) 2 Ch. 109; except where the assignment is in consideration of marriage or by way of family arrangement (not being a security for money advanced): S. L. Act, 1890, s. 4.

As to the effect of merger of the life estate, see *Re Barlow*, (1903) 1 Ch. 382.

The statutory power is not affected by the institution of an action for the administration of the estate: *Cardigan* v. *Curzon-Howe*, 30 Ch. D. 531.

But where the land is subject to a trust for sale, the life-tenant cannot sell under the power conferred by section 63 of the Act of 1882, without the leave of the Court: S. L. Act, 1884, s. 7.

Since the 18th of August, 1890, a life-tenant has been able to complete his predecessor's contract by any conveyance which his predecessor could have validly made: S. L. Act, 1890, s. 6.

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As to married women life-tenants, see p. 91; infants, p. 85; and lunatics, p. 86.

As to other persons having the powers of a life-tenant under the Act, see s. 58; and see *Re Carne*, (1899) 1 Ch. 324.

Power to mortgage fee.

A life-tenant has power to mortgage the fee simple in the following cases:—

(1) Since the 1st of January, 1883, where money is required for enfranchisement, or for equality of exchange, or partition: S. L. Act, 1882, ss. 18, 20.

(2) Since the 18th of August, 1890, where money is required for discharging an incumbrance on the settled land: S. L. Act, 1890, s. 11; see *Hampden* v. *Buckinghamshire*, (1893) 2 Ch. 531.

In either case, the money raised must be paid to the 'trustees of the settlement,' or into Court, at the option of the life-tenant: S. L. Act, 1882, s. 22.

Fiduciary position.

If a life-tenant of renewable leaseholds purchases the fee it becomes subject to the trusts of the settlement: see *Re Ranelagh*, 26 Ch. D. 590; *Phillips* v. *Phillips*, 29 Ch. D. 673.

TENANTS PUR AUTRE VIE.

Tenant pur autre vie.

A tenant *pur autre vie* can assign his estate or devise it by will; and on his death before 1898 the estate, if devised by his will, passed to the devisee, or if he died intestate it descended (subject to the provisions of the Intestates' Estates Act, 1890: see *ante*, p. 60), to his heir if named in the grant, otherwise to his personal representative: 1 Vict. c. 26, s. 6; Tud. L. C. 104: see *Re Michell*, (1892) 2 Ch. 87; *Mountcashell* v. *More-Smyth*, (1896) A. C. 158; *Re Sheppard*, (1897) 2 Ch. 67; *Re Inman*, (1903) 1 Ch. 241.

But on the death of a tenant *pur autre vie* on or after the 1st of January, 1898, the estate, notwithstanding any

devise, vests, like a chattel real, in his personal representatives, and only the beneficial interest, subject to debts and administration expenses, passes to the devisee or heir: the assent or conveyance of the personal representatives being required to vest the estate in him: 60 & 61 Vict. c. 65, ss. 1, 2, 3; and see *ante*, p. 56.

The widow of a tenant *pur autre vie* is not entitled to dower: *Re Michell*, (1892) 2 Ch. 87.

An estate *pur autre vie* may be settled, and the owners of the successive estates have similar powers of disposition to those given by similar limitations of a fee simple estate: see *Re Barber*, 18 Ch. D. 624.

A quasi entail may be barred by deed without enrolment, but if there is a prior life-tenant, his concurrence is necessary: Tud. L. C. 101, 102.

A tenant *pur autre vie* has the powers of a life-tenant under the Settled Land Act, 1882 (s. 58), unless he acquired his estate by assignment from the life-tenant (s. 50). See *ante*, p. 67.

TENANTS FOR YEARS.

Tenant for years.

A tenant for years (unless restrained by the lease) can assign or underlease his term or bequeath it by will, but cannot grant a longer term than he has: Wms. R. P. 495, 505.

Life estate.

If he grants the term to one for life, the whole term vests in the life-tenant, subject to being divested by his death; and a limitation over only takes effect as an executory interest: 2 Pres. 2; see *Re Bellamy*, 25 Ch. D. 620.

Sub-lease.

If the termor makes an underlease for a shorter term, the original term remains in him: see *Re Russell Road Purchase Moneys*, L. R. 12 Eq. 83; but an underlease for the whole term amounts to an assignment: *Beardman* v. *Wilson*, L. R. 4 C. P. 57.

Surrender.

A lease may be determined (1) by a deed surrendering the term to the reversioner: see 8 & 9 Vict. c. 106, s. 3;

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or (2) by the grant of a new lease to the tenant, or to a stranger with his assent and change of possession: *Wallis* v. *Hands*, (1893) 2 Ch. 75.

An underlease is not affected by the surrender of the lease: *G. W. R. Co.* v. *Smith*, 2 Ch. D. 235; see *David* v. *Sabin*, (1893) 1 Ch. 523; but the next vested estate becomes the reversion: 8 & 9 Vict. c. 106, s. 9; and see 4 Geo. II. c. 28, s. 6.

As to the cases in which a long term may be enlarged into a fee simple, see p. 40.

Devolution on death.

On the death of a tenant for years, the term, although bequeathed by his will, vests in the executor; but on his assent to the bequest, the term vests in the legatee without any assignment, and he can confer a legal title: 3 Pres. 144; whether the bequest be specific: *Re Culverhouse*, (1896) 2 Ch. 251; or residuary: *Austin* v. *Beddoe*, 41 W. R. 619. In recent transactions the concurrence or written assent of the executor is regarded as essential to the validity of the legatee's assignment: 3 Pres. 145.

Where leaseholds are appointed by will under a general power, the executor's concurrence in an assignment is also necessary, the property being assets on which he has a charge for probate or estate duty: see 23 & 24 Vict. c. 15, s. 5; 57 & 58 Vict. c. 30, s. 8.

An assent to a life interest is an assent to a bequest in remainder: *Stevenson* v. *Mayor of Liverpool*, L. R. 10 Q. B. 81.

Where a tenant for years dies intestate, the term vests in his administrator on administration being granted: Wms. Ex. 512. But the beneficial interest belongs to the widow and next of kin according to the Statute of Distributions: *Cooper* v. *Cooper*, L. R. 7 H. L. 53; whatever the intestate's domicil: *Duncan* v. *Lawson*, 41 Ch. D. 394; subject to debts and administration expenses and the provisions of the Intestates' Estates Act, 1890 (see *ante*, p. 60); an assignment from the

administrator being necessary to vest the term in them: Burton, 311.

As to the power of disposition of executors and administrators, see p. 102; and as to devolution on death, p. 103.

DONEES OF POWERS.

Donee of general power.

The donee of a general power of appointment over real estate by deed or will, has the same power of disposition as a tenant in fee simple: Sug. Pow. 395, 398; and may make the appointment at any time during his life: Sug. Pow. 261.

There must be some reference to the power or the property, except in the case of a will: Sug. Pow. 300; Farwell, 176; see *ante*, p. 25.

Will.

His will may operate as an appointment though made before the creation of the power: *Airey* v. *Bower*, 12 App. Cas. 263; provided the power comes into existence before his death: *Jones* v. *Southall*, 32 Beav. 31.

If a general power over real estate was exercised by the will of a donee dying before 1898, the estate vested in the appointee; but if such a power is executed by the will of a donee dying on or after the 1st of January, 1898, the estate vests, like a chattel real, in his executor: 60 & 61 Vict. c. 65, s. 1; and only the beneficial interest, subject to debts and administration expenses, passes to the appointee (s. 2); the executor's assent or conveyance being necessary to vest the estate in him (s. 3); see *ante*, p. 56.

A man may appoint to himself or his wife: Sug. Pow. 471; Farwell, 8; *Meade King* v. *Warren*, 32 Beav. 111; and a wife may appoint to her husband: *Wood* v. *Wood*, L. R. 10 Eq. 220.

As to married women's powers, see pp. 87, 92; infants, p. 85; lunatics, p. 86.

Special power

Appointments in exercise of a special power are only valid so far as they are in favour of objects of the power:

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Sug. Pow. 507: Farwell, 312. But an appointment to trustees for sale and division among objects is valid in equity: Farwell, 320; see *Re Paget*, (1898) 1 Ch. 290; *Re Redgate*, (1903) 1 Ch. 356.

A power to appoint the fee simple, enables the donee to appoint a less estate: Sug. Pow. 412; but a power to appoint in tail, authorises an appointment in tail only: *Re Porter*, 45 Ch. D. 179.

Only such estates can be created as would have been valid if inserted in the instrument creating the power: Sug. Pow. 396; *Re Brown & Sibly*, 3 Ch. D. 156; and in this respect a general power to appoint by will only has been treated as a special power: *Re Powell*, 18 W. R. 228; *contrâ*, *Rous* v. *Jackson*, 29 Ch. D. 521; and see Farwell, 287.

There must be some reference to the power or the property: Sug. Pow. 314; Farwell, 176; *Re Williams*, 42 Ch. D. 93.

Hence a will made before the creation of the power can seldom operate as an appointment: *Re Hayes*, (1901) 2 Ch. 529.

Mere general words of reference to any other power besides the one specifically referred to may be useless: see *Re Porter*, 45 Ch. D. 179; but see *Carver* v. *Richards*, 1 D. F. & J. 548.

An appointment by deed does not pass the fee without proper words of limitation: Sug. Pow. 441.

Execution.

Where no mode of execution is prescribed, the appointment may be made by deed or will: Sug. Pow. 203; *Re Jackson*, 13 Ch. D. 189.

But a power to appoint by deed is not duly exercised by will, nor can a power to appoint by will be exercised by deed: Sug. Pow. 209, 210; Farwell, 172, 173; see *infrâ*.

Any consent required by the power must be obtained: Sug. Pow. 207: see *post*, p. 108.

All prescribed formalities must be strictly complied

with: Sug. Pow. 206; Farwell, 138. But as to attestation of deeds, see *ante*, p. 22; and as to attestation of wills, see *ante*, p. 28.

Defective executions.

Defective executions of a power are aided in equity in favour of a wife, children, creditors, or purchasers, provided an intention to execute it appears clearly in writing: Sug. Pow. 533, 534, 550; Farwell, 329, 335.

When aided.

Examples:—

(1) Contracts for value or covenants to appoint: Sug. Pow. 552; Farwell, 336.

(2) Appointments by will where a deed is required: Sug. Pow. 558; *Bruce* v. *Bruce*, L. R. 11 Eq. 371; but see *Cooper* v. *Martin*, L. R. 3 Ch. 57.

(3) Insufficient attestation of appointments other than wills: Sug. Pow. 559; *Kennard* v. *Kennard*, L. R. 8 Ch. 227; see *ante*, p. 28.

When not aided.

But the following defective executions are not aided:—

(1) Wills insufficiently attested: 1 Vict. c. 26, s. 10; *Re Kirwan*, 25 Ch. D. 373.

(2) Appointments by deed where a will is required: Sug. Pow. 561; Farwell, 332.

Fraud on power.

If the donee of a special power appoints under a bargain for his own benefit, the appointment is a fraud on the power, and void: Sug. Pow. 609; see *Re Huish*, L. R. 10 Eq. 5: *secus* in the case of a power to jointure: *Saunders* v. *Shafto*, (1905) 1 Ch. 126.

Revocation.

An appointment by deed is irrevocable, unless it reserves a power of revocation: Sug. Pow. 387; Farwell, 271.

If a power of revocation is reserved and exercised, the original power is restored: Sug. Pow. 388; Farwell, 273.

Where the power is exercisable by will only, the appointment is revocable during the donee's life: Sug. Pow. 214.

An appointment by will may be adeemed by subsequent dealings with the property: *Re Dowsett*, (1901) 1 Ch. 398;

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and lapses if the appointee dies before the testator: see *Holyland* v. *Lewin*, 26 Ch. D. 266.

Release.

Before 1882, a power could not be released, unless coupled with an interest: Sug. Pow. 49, 82; Farwell, 11. But since the 1st of January, 1882, the donee of any power has been able to release it by deed: Conv. Act, 1881, s. 52; and the rules as to fraudulent appointments do not apply: *Re Somes*, (1896) 1 Ch. 250; and since the 1st of January, 1883, the donee of any power has been able to disclaim it by deed: Conv. Act. 1882, s. 6.

Exception:—A life-tenant's powers under the Settled Land Act, 1882, cannot be released or disclaimed: see *ante*, p. 67.

A grant by the donee may operate as a release of the power: see *Foakes* v. *Jackson*, (1900) 1 Ch. 807.

Devolution in default of appointment.

If the power is not exercised, the estate devolves according to the limitations in default of appointment, unless the power is in the nature of a trust or contains a gift by implication: Sug. Pow. 596; *Richardson* v. *Harrison*, 16 Q. B. D. 85; *Wilson* v. *Duguid*, 24 Ch. D. 244; *Re Weekes*, (1897) 1 Ch. 289.

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INCAPACITIES.

Incapacities.

All persons are presumed to be capable of disposing of their property, except so far as they are disqualified by being aliens, convicts, outlaws, bankrupts, insolvent, liquidating or compounding debtors, infants, lunatics, idiots, or married women: see 1 Pres. 316.

ALIENS.

Alien.

Before the 12th of May, 1870, an alien could acquire real estate by purchase, but could not hold it against the

Crown; and the Crown's rights were not defeated by his conveyance: Wms. R. P. 294. But if naturalized or made a denizen, he became capable of holding and disposing of real estate: Burton, 59; see Dart, 31. Land did not vest in an alien by act of law; so that he could not inherit, nor could he take any estate in his wife's property: 1 Pres. 346; Tud. L. C. 240.

Since the 12th of May, 1870, an alien has been able to acquire, hold and dispose of land in the same manner as a natural-born subject: 33 Vict. c. 14, s. 2; see *Sharp* v. *St. Sauveur*, L. R. 7 Ch. 343; *Bloxam* v. *Favre*, 8 P. D. 101; 9 P. D. 130; and see 35 & 36 Vict. c. 39, s. 3.

CONVICTS AND OUTLAWS.

Convict. Before the 4th of July, 1870, a conviction for treason or felony caused a forfeiture of the convict's property to the Crown or mesne lord, either absolutely or for the convict's life: see Burton, 57, 58; Tud. L. C. 226, 227; Dart, 20.

A conviction since the 4th of July, 1870, does not cause forfeiture: 33 & 34 Vict. c. 23, s. 1; *Re Dash*, 57 L. T. 219; but the convict is incapable of alienating so long as he has not completed his sentence or received pardon (ss. 7, 8); except as to property acquired while lawfully at large (s. 30).

If an administrator is appointed by the Crown, the convict's property vests in him, with power to sell and mortgage (ss. 10, 12): see *Carr* v. *Anderson*, (1903) 2 Ch. 279; only revesting in the convict on completion of his sentence, pardon, death or bankruptcy (s. 18). Trust estates are not forfeited by the trustee's conviction, and do not vest in the administrator: 13 & 14 Vict. c. 60, s. 46; Trustee Act, 1893, s. 48; *Re Levy & Debenture Corpn.*, 42 W. R. 533.

Outlaw. Outlawry causes a forfeiture of the outlaw's property to the Crown: Tud. L. C. 227; see 33 & 34 Vict. c. 23, s. 1.

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BANKRUPTS.

Bankrupts. B. Acts, 1849 and 1861.

When a person was adjudged bankrupt under the Bankruptcy Act of 1849 or 1861 (*i.e.*, between the 11th of October, 1849, and the 31st of December, 1869, when both Acts were repealed by 32 & 33 Vict. c. 83), all freeholds and leaseholds, belonging to him at the commencement of the bankruptcy or acquired before obtaining his certificate of conformity or discharge, vested in the assignees for the time being by virtue of their appointment, without any conveyance: B. Act, 1849, ss. 141, 142; B. Act, 1861, s. 161; but after the 11th of October, 1861, the property vested in the creditors' assignee on his appointment: B. Act, 1861, s. 117; see *Buckland* v. *Papillon*, L. R. 2 Ch. 67; *Ex p. Carter*, 2 Ch. D. 806.

The certificate of appointment of the assignees required registration within two months in respect of property in Middlesex or Yorkshire: B. Act, 1849, s. 143.

On a sale by the assignees before the 11th of October, 1861, the purchase-money had to be paid to the official assignee: B. Act, 1849, s. 39; but after that day the purchase-money was payable to the creditors' assignee: B. Act, 1861, s. 127.

The bankrupt's rights were barred by the order of the Court that he should join in the conveyance, although he did not execute it: B. Act, 1849, s. 148.

The assignees could exercise the bankrupt's beneficial powers: B. Act, 1849, s. 147.

The bankrupt's copyholds did not vest in the assignees, but could be sold by the Court: the sale being carried out before the 11th of October, 1861, by a deed enrolled in the court rolls: B. Act, 1849, s. 209; and after that day by a vesting order: B. Act, 1861, s. 114; the purchaser's title being completed in each case by admittance: see B. Act, 1849, s. 210.

If the bankruptcy was annulled, the property remaining

in the assignees revested in the bankrupt: *Lloyd* v. *Lloyd*, L. R. 2 Eq. 722.

The discharge of the bankrupt did not divest any property already vested in the assignees; but property acquired by the bankrupt after obtaining his discharge did not pass to the assignees: *Gibbins* v. *Eyden*, L. R. 7 Eq. 371.

If on the 16th of September, 1887, the estate was vested in a creditors' assignee, a subsequent order of the Court appointing the official assignee or person appointed to perform his duties to be sole assignee, vests the whole of the property in him alone: 50 & 51 Vict. c. 66, s. 4.

Bankruptcy Act, 1869.

When a person was adjudged bankrupt under the Bankruptcy Act, 1869 (*i.e.*, between the 1st of January, 1870, and the 31st of December, 1883, when it was repealed by the B. Act, 1883), all freeholds, leaseholds, and copyholds, belonging to him at the commencement of the bankruptcy, or acquired during its continuance, vested in the registrar as trustee until a trustee was appointed by the creditors, and passed to the trustee for the time being, without any conveyance: B. Act, 1869, ss. 15, 17, 83.

Accordingly, the bankrupt could neither convey any estate to a purchaser nor give a discharge for the purchase-money: see *Ex p. Rabbidge*, 8 Ch. D. 367.

The certificate of appointment of the trustee required registration in respect of property in Middlesex or Yorkshire (s. 83).

The trustee had power to sell the property and give a discharge for the purchase-money (s. 25), and could dispose of copyholds without being admitted (s. 22).

The trustee could exercise the bankrupt's beneficial powers (ss. 15, 25), but not after the bankrupt's death; *Nichols to Nixey*, 29 Ch. D. 1005.

A disclaimer by the trustee of leaseholds operated as a surrender of the lease (s. 23); destroying equitable interests created by the bankrupt: *Taylor* v. *Gillott*,

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L. R. 20 Eq. 682; but not affecting legal underleases: *Smalley* v. *Hardinge*, 7 Q. B. D. 524.

Bankruptcy Act, 1869.

As to the effect of disclaimer by the trustee of the bankrupt's freeholds, see *Re Mercer & Moore*, 14 Ch. D. 287.

If the adjudication was annulled, the property remaining in the trustee vested in such person as the Court appointed, or in default, reverted to the bankrupt (s. 81): see *Metcalfe* v. *Metcalfe*, 43 Ch. D. 643.

The discharge of the bankrupt and close of the bankruptcy, did not divest any property already vested in the trustee (see s. 52): but property acquired by the bankrupt after the close of the bankruptcy or after obtaining his discharge, did not vest in the trustee: *Re Pettit*, 1 Ch. D. 478; *Ebbs* v. *Boulnois*, L. R. 10 Ch. 484.

Any property outstanding in the trustee at the close of the bankruptcy and remaining undistributed after the 31st of December, 1883, vested in the person appointed by the Board of Trade for that purpose: B. Act, 1883, s. 160; viz., the official receiver attached to the Court having jurisdiction over the bankruptcy: *Bd. of Trade Order of 1st January*, 1884; see *Order of 31st March*, 1890.

If, after the 31st of December, 1883, a registrar was the trustee in a pending bankruptcy, the property vested in the official receiver appointed by the Board of Trade for that purpose: B. Act, 1883, s. 161; viz., the official receiver attached to the Court having jurisdiction over the bankruptcy: *Bd. of Trade Order of 31st January*, 1884; see *Order of 31st March*, 1890.

Every bankruptcy under the Act of 1869, pending on the 31st of December, 1887, became closed on that day, in the absence of an order of the Court to the contrary: 50 & 51 Vict. c. 66, s. 3.

Bankruptcy Act, 1883.

When a person is adjudged bankrupt under the Bankruptcy Act, 1883 (*i.e.*, after the 31st of December, 1883), all freeholds, leaseholds, and copyholds belonging to him

at the commencement of the bankruptcy, or acquired before his discharge, vest in the official receiver as trustee until a trustee is appointed by the creditors, and pass to the trustee for the time being, without any conveyance: B. Act, 1883, ss. 20, 21, 44, 54; see *Ex p. Bd. of Trade*, 15 Q. B. D. 196.

The trustee takes subject to any existing equities: see *Bird* v. *Philpott*, (1900) 1 Ch. 822.

A receiving order does not of itself divest the debtor's property: *Rhodes* v. *Dawson*, 16 Q. B. D. 548; see *Re Sartoris*, (1892) 1 Ch. 11; but if followed by adjudication, prevents the bankrupt from conveying any estate to a purchaser, or giving a discharge for the purchase-money, whether he acquired the property before or after the bankruptcy: see *Ex p. Rabbidge*, 8 Ch. D. 367; *Re New Land, &c. Assocn. & Gray*, (1892) 2 Ch. 138; *London and County Contracts* v. *Tallack*, 51 W. R. 408. In the case, however, of after-acquired leaseholds, where the trustee has not intervened but consents to the sale, it has been held that the bankrupt can make a title: *Re Clayton and Barclay*, (1895) 2 Ch. 212; but the trustee's concurrence in the assignment appears to be necessary to pass the legal estate.

The order of adjudication does not require registration in respect of property in Middlesex or Yorkshire; *Re Calcott and Elvin*, (1898) 2 Ch. 460; but the certificate of appointment of the trustee requires registration (s. 54).

The trustee has power to sell the property and give a discharge for the purchase-money (s. 56): see *Turquand* v. *Bd. of Trade*, 11 App. Cas. 286; and can dispose of copyholds without being admitted (s. 50).

The trustee can exercise the bankrupt's beneficial powers (ss. 44, 56); but not after the bankrupt's death: see *Nichols to Nixey*, 29 Ch. D. 1005; nor where the bankrupt is a married woman: *Ex p. Gilchrist*, 17 Q. B. D. 521.

A disclaimer by the trustee of leaseholds, determines

the rights and interests of the bankrupt therein, without affecting the rights of a sub-lessee or any other person (s. 55); and the Court has power by a vesting order under that section to vest the property in any person interested therein without any conveyance or assignment, and to exclude any mortgagee by demise or sub-lessee declining to accept a vesting order: see *Re Finley*, 21 Q. B. D. 475.

The trustee cannot in this way determine the debtor's contract for sale: *Pearce* v. *Bastable*, (1901) 2 Ch. 122; *Re Bastable*, (1901) 2 K. B. 518.

If the adjudication is annulled, the property remaining in the trustee vests in such person as the Court appoints, or in default, reverts to the bankrupt (s. 35); see *Metcalfe* v. *Metcalfe*, 43 Ch. D. 643.

The discharge of the bankrupt does not divest any property already vested in the trustee: see s. 28; 53 & 54 Vict. c. 71, s. 8; *Re Hawkins*, (1892) 1 Q. B. 890.

On the release of the trustee, the Official Receiver becomes trustee (s. 82); see *Re Leach*, (1900) 2 Q. B. 649.

An order for the administration in bankruptcy of a deceased debtor's estate, has a similar effect to an order of adjudication, and vests the debtor's property in the official receiver as trustee (s. 125): see 53 & 54 Vict. c. 71, s. 21.

Scotch bankruptcy.

Bankruptcy in Scotland divests the debtor's land in England, but a purchaser for value is not affected by the bankruptcy until the act and warrant of confirmation of the trustee is registered in the English Bankruptcy Court: 19 & 20 Vict. c. 79, s. 102.

Irish bankruptcy.

Bankruptcy in Ireland also divests the debtor's land in England: 20 & 21 Vict. c. 60, ss. 268, 341; see *Callender & Co.* v. *Col. Sec. of Lagos*, (1891) A. C. 467.

INSOLVENT DEBTORS.

Insolvent debtor. Act of 1838.

When a petition was filed by a person imprisoned for debt, or by his creditors, and a vesting order was made

under the Insolvent Debtors Act, 1838 (repealed by the B. Act, 1861), all the debtor's property and all his future right in property acquired before becoming entitled to his final discharge, according to the adjudication, or (if no adjudication) before obtaining his full discharge from custody, vested in the provisional assignee until assignees were appointed by the Court, and passed to the assignees for the time being, without any conveyance: 1 & 2 Vict. c. 110, ss. 37, 45, 65; see *Ex parte Pain*, L. R. 3 Ch. 639. But the property was liable to be divested by dismissal of the petition or by the bankruptcy of the debtor within two months (ss. 37, 39).

If there was any property in Middlesex or Yorkshire, a certified copy of the vesting order and of the appointment of assignees required registration within two months (s. 46).

The assignees could sell the property (including copyholds) by public auction, with the consent of the majority of the creditors (s. 47); and could exercise the debtor's beneficial powers (s. 49).

The discharge of the debtor did not divest any property already vested in the assignees: *Tudway* v. *Jones*, 1 K. & J. 691.

Act of 1842.

When a petition for protection was filed by a debtor under the Insolvent Debtors Act, 1842 (repealed by the B. Act, 1861), the debtor's property vested in the official assignee nominated by the commissioners, and on the final order being made, or, after the 9th of August, 1844, on their appointment, vested in the official assignee and assignee chosen by the creditors, and passed to the assignees for the time being, without any conveyance: 5 & 6 Vict. c. 116, ss. 1, 7, 9; 7 & 8 Vict. c. 96, ss. 4, 10; see *Ex parte Welchman*, 11 Ch. D. 48. But if the petition was dismissed, the property re-vested in the debtor: 7 & 8 Vict. c. 96, s. 10.

If there was any property in Middlesex or Yorkshire, the certificate of appointment of the assignees required

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registration within two months: 5 & 6 Vict. c. 116, s. 8.

The assignees had the same power of sale as assignees in bankruptcy: see Rules of 1st Nov. 1842; the proceeds being received by the official assignee; see 7 & 8 Vict. c. 96, s. 4; and could exercise the debtor's beneficial powers (s. 11).

The jurisdiction under this Act was first given to the Court of Bankruptcy, but was transferred on the 15th of September, 1847, to the Court for the relief of insolvent debtors: see 10 & 11 Vict. c. 102, s. 4.

Close of insolvency.

Every pending insolvency became closed on the 1st of January, 1871, or at the expiration of 20 years from the filing of the petition (whichever last happened), in the absence of an order of the Court to the contrary; and thereupon the insolvent or his representatives acquired the same rights as if he had been bankrupt and had at the date of the closing obtained his discharge under the Bankruptcy Act, 1869: 32 & 33 Vict. c. 83, s. 15; see *Re Clagett*, 20 Ch. D. 637.

If, on the 16th of September, 1887, the estate was vested in a creditors' assignee, either alone or jointly with the official assignee, a subsequent order of the Court appointing the official assignee to be sole assignee vests the whole of the property in him alone: 50 & 51 Vict. c. 66, s. 4.

Australian insolvency.

Insolvency in Australia does not divest the debtor's land in England: *Waite* v. *Bingley*, 21 Ch. D. 674; but see *Re Levy*, 30 Ch. D. 119.

LIQUIDATING DEBTORS.

Liquidating debtor.

When a debtor presented a petition for liquidation of his affairs by arrangement or composition, and a special resolution for liquidation was passed by his creditors and registered under the 125th section of the Bankruptcy Act, 1869 (repealed by the B. Act, 1883), the property belonging

to the debtor at the commencement of the liquidation or acquired during its continuance, vested in the trustee appointed by the creditors, from the date of the registrar's certificate of his appointment, and passed to the trustee for the time being, without any conveyance: B. Act, 1869, s. 125 (5), (6), (7); see *Re Waddell*, 2 Ch. D. 172.

The filing of a liquidation petition did not of itself divest the debtor's property: *Re Bonham*, 10 Ch. D. 595; but the trustee's title related back to the presentation of the petition: *Ex p. Duignan*, L. R. 6 Ch. 605.

If there was any property in Middlesex or Yorkshire, the certificate of appointment of the trustee required registration: see s. 125 (6), (7).

The trustee had the same power of disposition as a trustee in bankruptcy: see s. 125 (7).

The discharge of the debtor, close of the liquidation, and release of the trustee, did not divest any property already vested in the trustee: *Ex p. Witt*, W. N. 1879, 142; but property acquired by the debtor after his discharge or the close of the liquidation, did not vest in the trustee: *Ebbs* v. *Boulnois*, L. R. 10 Ch. 479; *Ex p. Wainwright*, 19 Ch. D. 140.

Any property outstanding in the trustee at the close of the liquidation and remaining undistributed after the 31st of December, 1883, vests in the person appointed by the Board of Trade for that purpose: B. Act, 1883, s. 160: viz., the official receiver attached to the Court having jurisdiction over the liquidation: *Bd. of Trade Order of 1st January*, 1884: see *Order of 31st March*, 1890.

If, after the 31st December, 1883, there is no trustee acting in a pending liquidation, the property vests in the official receiver appointed by the Board of Trade for that purpose, until a new trustee is appointed by the creditors: B. Act, 1883, s. 159: see *Order of 31st March*, 1890. So long as no official receiver is appointed under this section, the property seems to vest in the registrar until the appointment of a creditors' trustee: see s. 169 (3).

COMPOUNDING DEBTORS.

Compounding debtor.

Bankruptcy Act, 1869.

When a debtor presented a petition for liquidation of his affairs by arrangement or composition, and an extraordinary resolution for a composition was passed by the creditors and registered under the 126th section of the Bankruptcy Act, 1869 (repealed by the B. Act, 1883), the debtor remained entitled to his property, with full power of disposition, notwithstanding the appointment of a trustee: *Re Kearley & Clayton*, 7 Ch. D. 615; *Re McHenry*, 21 Q. B. D. 580.

Bankruptcy Act, 1883.

When a special resolution for a composition was passed and confirmed by the creditors and approved by the Court under the 18th section of the Bankruptcy Act, 1883 (repealed by the B. Act, 1890), the debtor's property seems to have vested in the trustee (if any) without any conveyance (sub-s. 13); but if no trustee was appointed, the provisions divesting the debtor's estate seem not to have applied.

Property acquired by the debtor after the approval of the composition did not pass to the trustee, unless so provided: *Re Croom*, (1891) 1 Ch. 695.

Bankruptcy Act, 1890.

A composition under the Bankruptcy Act, 1890, seems to have a similar effect to a composition under the Act of 1883: see 53 & 54 Vict. c. 71, s. 3.

INFANTS.

Infant's conveyance.

An infant's conveyance is voidable by himself or his heirs, unless made in pursuance of a custom or statutory power: 1 Pres. 319; Wms. R. P. 289; see *Burnaby* v. *Equitable, &c., Soc.*, 28 Ch. D. 416; *Edwards* v. *Carter*, (1893) A. C. 360.

Feoffment.

An infant who has attained fifteen can dispose of gavelkind land by feoffment; but such disposition is voidable

if at an undervalue: *Re Maskell & Goldfinch*, (1895) 2 Ch. 525.

Appointment.

An infant cannot exercise a beneficial power over real estate; although he can exercise a power not coupled with an interest: Sug. Pow. 177; Farwell, 123, 125; see *Re Cardross*, 7 Ch. D. 728; *Re D'Angibau*, 15 Ch. D. 228.

Sale by Court.

An infant's freehold or leasehold land is deemed to be a settled estate within the Settled Estates Act, 1877: Conv. Act, 1881, s. 41: so that a sale can be effected under an order of the Court: *Re Sparrow*, (1892) 1 Ch. 412; see *post*, p. 110.

S. L. Act, 1882.

An infant owner in possession is 'deemed tenant for life' for the purposes of the Settled Land Act, 1882 (s. 59); so that a sale can be effected by the 'trustees of the settlement,' under the powers of the Act (s. 60): see *Re Dudley*, 35 Ch. D. 338; and see *ante*, p. 66.

Where an infant is, or would if of age be, tenant for life, the 'trustees of the settlement' can sell the settled land under the Act (s. 60).

An infant's undivided share of an estate can be sold either under the Settled Land Acts or under the Partition Act (*post*, p. 97): see *Re Robinson*, 31 Ch. D. 250.

Mortgage.

A mortgage made by an infant since the 7th of August, 1874, is void: 37 & 38 Vict. c. 62, s. 1; see *Nottingham, &c., Soc.* v. *Thurstan*, (1903) A. C. 6.

As to the jurisdiction of the Court to authorise a mortgage of an infant's lands, see *Re Jackson*, 21 Ch. D. 786.

Settlement.

Infants' Settlement Act.

A settlement by an infant is in general voidable: see *Duncan* v. *Dixon*, 44 Ch. D. 211; but a valid settlement may be made by an infant on marriage with the sanction of the Court under the Act, 18 & 19 Vict. c. 43: see *Re Sampson & Wall*, 25 Ch. D. 482. The Act, however, does not remove the disability of coverture: *Buckmaster* v. *Buckmaster*, 35 Ch. D. 21; 13 App. Cas. 61. The

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settlement is not avoided by the infant dying under age, unless he was tenant in tail: *Re Scott*, (1891) 1 Ch. 298.

Trust and mortgage estates.

Land vested in an infant upon trust or by way of mortgage, may be passed by a vesting order: 13 & 14 Vict. c. 60, s. 7; 53 Vict. c. 5, s. 143; Trustee Act, 1893, ss. 26, 28; see *ante*, p. 35.

Will.

An infant has no power of disposition by will: 1 Vict. c. 26, s. 7; Sug. Pow. 178.

LUNATICS AND IDIOTS.

Lunatic or idiot.

A lunatic or idiot has no power of disposition: 1 Pres. 327, 330; see *Re Walker*, (1905) 1 Ch. 160.

Lunacy Acts, 1853 and 1890.

But in certain cases, the committee of a lunatic can sell and convey in the lunatic's name and exercise his beneficial powers with the sanction of the Court of Lunacy: see 16 & 17 Vict. c. 70, ss. 116, 124—139; 53 Vict. c. 5, ss. 120, 124; *Re Corbett*, L. R. 1 Ch. 516; *Re Weld*, 28 Ch. D. 514.

S. L. Act, 1882.

Where a lunatic is tenant for life, his committee can sell the settled land with the sanction of the Court of Lunacy under the powers of the Settled Land Act, 1882 (s. 62): see *Re Ray*, 25 Ch. D. 464. But this enactment only applies to lunatics so found: *Re Baggs*, (1894) 2 Ch. 416.

Trust and mortgage estates.

Land vested in a lunatic upon trust or by way of mortgage may be passed by a vesting order of the Court of Lunacy: 13 & 14 Vict. c. 60, s. 8; 53 Vict. c. 5, s. 135; see *ante*, p. 35.

Unsound mind.

As to persons of unsound mind not so found, see 53 Vict. c. 5, s. 116; *Re X.*, (1894) 2 Ch. 415.

MARRIED WOMEN.

Married woman's conveyance.

A married woman can in general convey freeholds only by acknowledged deed with her husband's concurrence:

Freeholds.

3 & 4 Will. IV. c. 74, s. 77; Dart, 593; *Williams* v. *Walker*, 9 Q. B. D. 576; even though her estate be merely equitable: *Taylor* v. *Meads*, 4 D. J. & S. 605; see *Franks* v. *Bollans*, L. R. 3 Ch. 717. Acknowledgment and her husband's concurrence are also in general necessary to give effect to her disentailing deed (s. 40), or release of a power (s. 77), or disclaimer: 8 & 9 Vict. c. 106, s. 7.

Exceptions:—

(1) In the case of separate estate: see p. 88.

(2) In the case of separate property under the Married Women's Property Act, 1882: see p. 90.

(3) She can exercise a power by unacknowledged deed without her husband's concurrence: 3 & 4 Will. IV. c. 74, s. 78; Sug. Pow. 154; see *ante*, p. 71; and since the 1st of January, 1882, she has been able in the same way to release a power: Conv. Act, 1881, s. 52; *Re Chisholm*, (1901) 2 Ch. 82.

(4) Where an order dispensing with the husband's concurrence has been made under the 91st section of the Fines and Recoveries Act, she can convey without acknowledgment: *Goodchild* v. *Dougal*, 3 Ch. D. 650; but only subject to her husband's rights: *Fowke* v. *Draycott*, 29 Ch. D. 996.

Acknowledgment.

Where acknowledgment is necessary, her conveyance only takes effect from the time of acknowledgment: 3 & 4 Will. IV. c. 74, s. 86; Conv. Act, 1882, s. 7; see *Sharpe* v. *Foy*, L. R. 4 Ch. 35; and see *post*, p. 125.

The husband's bankruptcy does not prevent him from concurring in her acknowledged deed: *Cooper* v. *Macdonald*, 7 Ch. D. 288: *Re Jakeman*, 23 Ch. D. 344.

Copyholds.

A married woman's legal estates in copyholds (including estates tail), can in general be conveyed only by surrender with the concurrence of her husband, she being separately examined: 1 Pres. 340; see 3 & 4 Will. IV. c. 74, s. 77; but her equitable estates (including estates tail) can be conveyed either in that way or by acknowledged deed:

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3 & 4 Will. IV. c. 74, ss. 40, 50, 77, 79, 90; see *Green* v. *Paterson*, 32 Ch. D. 95; *Carter* v. *Carter*, (1896) 1 Ch. 62; Dart, 596.

Exceptions:—

(1) In the case of separate estate: see *infrà*.

(2) In the case of separate property under the Married Women's Property Act, 1882: see p. 90.

Leaseholds.

The wife's legal terms of years can in general be assigned by the husband alone: 1 Pres. 343; *Heron* v. *Heron*, W. N. 1887, 158; and his assignment of her equitable terms bars her right by survivorship: *Donne* v. *Hart*, 2 R. & M. 360; but not her equity to a settlement: *Hanson* v. *Keating*, 4 Ha. 1; which can only be defeated by obtaining her concurrence and acknowledgment: see Dart, 13; or by getting in the legal estate: see Lewin, 938.

Exceptions:—

(1) Where her interest is reversionary and cannot possibly vest in possession during the coverture, it cannot be passed without her concurrence and acknowledgment: *Duberley* v. *Day*, 16 Beav. 33; and see *Boxall* v. *Boxall*, 27 Ch. D. 220.

(2) In the case of separate estate: see *infrà*.

(3) In the case of separate property under the Married Women's Property Act, 1882: see p. 90.

Trust and mortgage estates.

Estates vested in a married woman as trustee can only be conveyed with the same formalities as her beneficial interests; and so with her mortgage estates, unless the Act of 1882 applies: see *post*, p. 90.

Separate estate.

Unless restrained from anticipation, a married woman can pass the beneficial interest in her separate estate (other than estates tail), without her husband's concurrence or an acknowledged deed: *Taylor* v. *Meads*, 4 D. J. & S. 597; *Pride* v. *Bubb*, L. R. 7 Ch. 64; and where the legal estate is vested in trustees, they and the married

woman together can make a valid conveyance: *Taylor* v. *Meads*, 4 D. J. & S. 604. But if no trustees are interposed, the legal estate cannot be passed without the husband's concurrence and (in the case of freeholds) acknowledgment: see *Johnson* v. *Johnson*, 35 Ch. D. 349; unless the Act of 1882 applies.

Estates tail, forming part of her separate estate, cannot be barred without her husband's concurrence and (if freehold) an acknowledged deed: *Cooper* v. *Macdonald*, 7 Ch. D. 295; unless the Act of 1882 applies.

Restraint on anticipation.

If restrained from anticipation, she cannot dispose of her separate estate: *Stanley* v. *Stanley*, 7 Ch. D. 589; or release it: *Bateman* v. *Faber*, (1898) 1 Ch. 144; unless the restraint is removed by an order of the Court under sect. 39 of the Conveyancing Act, 1881: *Bates* v. *Kesterton*, (1896) 1 Ch. 159; and see M. W. P. Act, 1882, s. 19. But the restraint does not prevent her from barring her estates tail: *Cooper* v. *Macdonald*, 7 Ch. D. 288. A restraint on anticipation is inoperative unless the property is separate estate: *Stogdon* v. *Lee*, (1891) 1 Q. B. 661; or separate property under the Act of 1882: *Re Lumley*, (1896) 2 Ch. 690.

The following property of a married woman is separate estate:—

Separate estate.

(1) Property devised or settled to her separate use: see *Dye* v. *Dye*, 13 Q. B. D. 156.

(2) Investments of wages or earnings acquired by her between the 9th of August, 1870, and the 31st of December, 1882: M. W. P. Act, 1870, s. 1 (repealed by M. W. P. Act, 1882).

(3) If married between the 9th of August, 1870, and the 31st of December, 1882, (*a*) all personal estate coming to her after marriage and before 1883, as next of kin of an intestate (unless settled): M. W. P. Act, 1870, s. 7 (repealed by M. W. P. Act, 1882); see *Re Voss*, 13 Ch. D. 504; and (*b*) the rents and profits of freeholds and copyholds descending upon her before 1883, as heiress of an

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intestate (unless settled): M. W. P. Act, 1870, s. 8 (repealed by M. W. P. Act, 1882); but not the fee simple: *Johnson* v. *Johnson*, 35 Ch. D. 345.

M. W. P. Act, 1882.

Separate property under the Married Women's Property Act, 1882 (including estates tail), can be conveyed by a married woman as a *feme sole*, without acknowledgment or her husband's concurrence (s. 1): *Re Drummond & Davie*, (1891) 1 Ch. 524; unless she is restrained from anticipation: *Re Lumley*, (1896) 2 Ch. 690.

The following property is separate property under the Act of 1882:—

(1) In the case of a woman married before 1883, all real and personal property her title to which accrues on or after the 1st of January, 1883: M. W. P. Act, 1882, s. 5; see *Re Parsons*, 45 Ch. D. 51; but not property in which she had a reversionary or contingent title before 1883, although it falls into possession after 1882: *Reid* v. *Reid*, 31 Ch. D. 402.

(2) In the case of a woman married since the 1st of January, 1883, all real and personal property belonging to her on marriage or subsequently acquired: M. W. P. Act, 1882, s. 2.

But the Act does not interfere with any settlement affecting the property (s. 19): *Hancock* v. *Hancock*, 38 Ch. D. 78; *Stevens* v. *Trevor-Garrick*, (1893) 2 Ch. 307.

Mortgage estates.

The Act applies to mortgage estates where the mortgage money is her separate property, so that acknowledgment is not required: *Re Brooke & Fremlin*, (1898) 1 Ch. 647; *secus* where she is trustee of the mortgage money: see *infrà*.

It is submitted that the application of the Act does not depend upon notice, and that inquiry as to the existence of a trust should always be made, notwithstanding the decision in *Re West & Hardy*, (1904) 1 Ch. 145.

Trust estates.

The Act does not extend to trust estates; so that a

married woman trustee can still convey freeholds only by acknowledged deed with her husband's concurrence: *Re Harkness & Allsopp*, (1896) 2 Ch. 358; in the case of copyholds, her separate examination and husband's concurrence are still necessary; and in the case of leaseholds, her husband must join in the assignment.

So, where a married woman conveys freeholds as personal representative under the powers of the Land Transfer Act, 1897, acknowledgment seems to be requisite; and where she assigns leaseholds as executrix, the husband must join in the assignment: see Wms. Ex. 734.

But since the 7th of August, 1874, a married woman being a 'bare trustee' of freeholds or copyholds, has been able to convey or surrender them as a *feme sole*, without acknowledgment or her husband's concurrence: V. & P. Act, 1874, s. 6; Trustee Act, 1893, s. 16; as where she is ordered by the Court to convey: *Re Docwra*, 29 Ch. D. 693; or is a mortgagee who has been paid off: see *Re Brooke & Fremlin*, (1898) 1 Ch. 650; *Re Howgate & Osborn*, (1902) 1 Ch. 451; and see *post*, p. 114.

S. L. Act, 1882.

Where a married woman is tenant for life, otherwise than for her separate use, she and her husband together can sell the settled land under the powers of the Settled Land Act, 1882, and where she is tenant for life for her separate use, she (without her husband) can sell under the Act, notwithstanding a restraint on anticipation (s. 61): *Re Pocock & Prankerd*, (1896) 1 Ch. 302; see *ante*, p. 65.

Will.

A married woman cannot in general dispose of freeholds or copyholds by will: 1 Vict. c. 26, s. 8; *Willock* v. *Noble*, L. R. 7 H. L. 589; *Dye* v. *Dye*, 13 Q. B. D. 147; even though her estate be merely equitable: *Taylor* v. *Meads*, 4 D. J. & S. 605; and she cannot dispose of leaseholds by will without the assent of her husband, which assent may be given after her death: *Elliot* v. *North*, (1901) 1 Ch.

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424; and should appear by the probate; and see *Re Atkinson*, (1899) 2 Ch. 1, as to the effect of probate by the husband.

Exceptions:—

(1) As to property which she has power to appoint, see *infrà*.

(2) As to separate estate, see *infrà*.

(3) As to separate property under the Act of 1882, see p. 93.

Effect of husband's death.

Before the 5th of December, 1893, a married woman's will did not become effectual by her surviving her husband: *Re Price*, 28 Ch. D. 709; *Re Cuno*, 43 Ch. D. 12.

M. W. P. Act, 1893.

But since that date, the 24th section of the Wills Act, 1837, has applied; so that if a married woman survives her husband and dies on or after the 5th of December, 1893, any property belonging to her at death may pass by her will made during coverture without re-execution: 56 & 57 Vict. c. 63, s. 3; although made before the Act: *Re Wylie*, (1895) 2 Ch. 116.

Will under power.

A married woman can dispose by will of property over which she has a power of appointment: *Thomas* v. *Jones*, 1 D. J. & S. 63.

Her will made under a power is not affected by her surviving her husband: Sug. Pow. 161; except where the power is only given in the event of her predeceasing him: see *Willock* v. *Noble*, L. R. 7 H. L. 589.

Will of separate estate.

A married woman can pass the beneficial interest in her separate estate by will, but not the legal estate, although vested in herself: *Hall* v. *Waterhouse*, 6 N. R. 20; unless the M. W. P. Act, 1882, applies.

As to the effect of the Land Transfer Act, 1897, see *ante*, p. 56.

A restraint on anticipation does not affect her power of disposition by will: *Re Currey*, 56 L. T. 80.

Her will of separate estate is not affected by her surviving her husband: *Bishop* v. *Wall*, 3 Ch. D. 194; but does not pass property acquired after his death: *Re Price*, 28 Ch. D. 709; unless the M. W. P. Act, 1893, applies: see *suprà*.

M. W. P. Act, 1882.

A married woman can dispose by will of her separate property under the Act of 1882 in the same manner as a *feme sole*: M. W. P. Act, 1882, s. 1; see *Re Bowen*, (1892) 2 Ch. 291; and see the M. W. P. Act, 1893, *suprà*, and the L. T. Act, 1897, *ante*, p. 56.

Devolution. Leaseholds.

On the death of a married woman intestate, her leaseholds (including separate estate) vest in her husband in his marital right, without letters of administration: 1 Pres. 343; *Re Bellamy*, 25 Ch. D. 620; and this right is not affected by the M. W. P. Act, 1882: *Surman* v. *Wharton*, (1891) 1 Q. B. 491.

Freeholds.

But if she died before 1898 her freeholds of inheritance (including separate estate) descended to her heir, subject to her husband's life estate by the curtesy (if any): *Dye* v. *Dye*, 13 Q. B. D. 147; *Eager* v. *Furnivall*, 17 Ch. D. 115; and if she has died since the 1st of January, 1898, devolve to her personal representative under the L. T. Act, 1897: see *ante*, p. 56.

Copyholds.

Her copyholds of inheritance (including separate estate) descend to her customary heir; and this seems not to be altered by the Land Transfer Act, 1897; but see *ante*, p. 60.

M. W. P. Act, 1882.

Her separate property under the Act of 1882 devolves in the same way, subject as before to the husband's curtesy: *Hope* v. *Hope*, (1892) 2 Ch. 336.

Curtesy

The husband is entitled to curtesy in his wife's freeholds, provided the following circumstances concur:—

(1) The wife, or the husband in her right, must at some time during the coverture have been solely seised in

possession of the legal or equitable estate: see *Eager* v. *Furnivall*, 17 Ch. D. 115.

(2) The estate must have been one which her issue by him might inherit;

(3) There must have been such issue born alive: see 3 Pres. 380—384.

Separate estate, if disposed of by the wife's deed or will, is not liable to curtesy: *Cooper* v. *Macdonald*, 7 Ch. D. 288.

In gavelkind lands, the right to curtesy does not depend on issue being born, but is limited to a moiety, and ceases on re-marriage: Wms. R. P. 301; see *Re Hobbs*, 36 Ch. D. 556.

In the case of copyholds, the right to curtesy depends on the custom of the manor: see 3 Pres. 380.

Divorce.

Divorce makes the wife a *feme sole* in respect of her property: *Thornley* v. *Thornley*, (1893) 2 Ch. 229; putting an end to the husband's marital right: *Wilkinson* v. *Gibson*, L. R. 4 Eq. 162; but not affecting his rights under a settlement: *Fitzgerald* v. *Chapman*, 1 Ch. D. 563; *Burton* v. *Sturgeon*, 2 Ch. D. 318.

Judicial separation.

Judicial separation makes the wife a *feme sole* in respect of reversionary and after-acquired property so long as the order stands: 20 & 21 Vict. c. 85, s. 25; 21 & 22 Vict. c. 108, s. 8; see *Waite* v. *Morland*, 38 Ch. D. 135.

Protection order.

A protection order has a similar effect: 20 & 21 Vict. c. 85, s. 21; 21 & 22 Vict. c. 108, s. 8; see *Re Coward & Adam*, L. R. 20 Eq. 179; *Hill* v. *Cooper*, (1893) 2 Q. B. 85.

Invalid marriage.

Where a marriage appears to be invalid the woman must be treated as a *feme sole*: see 5 & 6 Will. IV. c. 54.

Widow.

If the wife survives her husband, all her real and leasehold estates, not disposed of in his lifetime, remain in her notwithstanding any attempted devise by his will: 1 Pres. 343; Wms. R. P. 301, 510; and the coverture

being at an end, she has an absolute power of disposition over her property: see *Re Price*, 28 Ch. D. 711.

SECT. III.

CO-OWNERSHIP.

Co-ownership.

The power of disposition may be modified by the property belonging to several persons in co-ownership, as tenants by entireties, co-parceners, joint-tenants, or tenants in common.

TENANTS BY ENTIRETIES.

Tenants by entireties.

A grant to husband and wife, taking effect before 1883, makes them tenants by entireties: Wms. R. P. 305. But such a grant taking effect since the 1st of January, 1883, creates a joint-tenancy by reason of the M. W. P. Act, 1882: *Re March*, 27 Ch. D. 166; *Thornley* v. *Thornley*, (1893) 2 Ch. 229.

Freeholds.

Where husband and wife are seised of freeholds by entireties, the husband cannot alienate any part without the wife's concurrence and acknowledgment: Tud. L. C. 287; but in the case of leaseholds, he alone can dispose of the whole: 2 Pres. 43.

Leaseholds.

Survivorship

Tenants by entireties have no devisable interest, but on the death of either, the survivor takes the whole estate: 2 Pres. 57; Tud. L. C. 287; and this is not affected by the L. T. Act, 1897: see 60 & 61 Vict. c. 65, s. 1.

Divorce.

Divorce converts tenants by entireties into joint-tenants: *Thornley* v. *Thornley*, (1893) 2 Ch. 229.

Under a gift to husband and wife and others jointly, the husband and wife take only one share: *Re March*, 27 Ch. D. 166; unless a contrary intention is shown: *Re Dixon*, 42 Ch. D. 306; and this rule is not altered by the M. W. P. Act, 1882: *Re Jupp*, 39 Ch. D. 148.

CO-PARCENERS.

Co-parceners.

Co-heiresses hold in co-parcenary, and each one can dispose of her own share, by deed or will: 2 Pres. 69; and on her death intestate leaving issue before 1898 her share, or since the 1st of January, 1898, the beneficial interest therein, descends to such issue by right of representation: *Re Matson*, (1897) 2 Ch. 509; subject, in the latter case, to the rights of the personal representative, in whom the estate vests under the L. T. Act, 1897: see *ante*, p. 56. Co-heiresses taking by purchase under a limitation to the heirs of their ancestor take as joint-tenants: *Berens* v. *Fellowes*, 35 W. R. 356; *Owen* v. *Gibbons*, (1902) 1 Ch. 636.

JOINT-TENANTS AND TENANTS IN COMMON.

Joint-tenants.

A joint-tenant can dispose of his own share in his lifetime, but cannot devise it by will: 2 Pres. 62, 66;

Survivorship.

Burton, 93; so that if a joint-tenant dies without severing the joint-tenancy, the whole estate devolves to the survivors: 2 Pres. 57; and this is not affected by the L. T. Act, 1897: see 60 & 61 Vict. c. 65, s. 1.

Severance.

A joint-tenancy may be severed by alienation or by mutual agreement: *Re Wilks*, (1891) 3 Ch. 59.

If a joint-tenant conveys his whole interest to a stranger, the joint-tenancy is severed, and the grantee becomes tenant in common with the remaining joint-tenants, whose joint-tenancy continues between themselves: 2 Pres. 58, 60; see *Re Pollard*, 3 D. J. & S. 541.

A lease for years by one joint-tenant severs the tenancy if the property is leasehold, but not if it is freehold: 2 Pres. 58, 60; see *Palmer* v. *Rich*, (1897) 1 Ch. 134.

A contract for sale by one joint-tenant effects an equitable severance: Tud. L. C. 278; see *Re Wilford*, 11 Ch. D. 267; so does a covenant to settle: *Caldwell* v. *Fellowes*, L. R. 9 Eq. 410.

Marriage does not sever a woman's joint-tenancy, either

of freeholds or leaseholds: *Palmer* v. *Rich*, (1897) 1 Ch. 134; or of choses in action: *Re Butler*, 38 Ch. D. 286.

Corporations have been capable of holding property in joint-tenancy since the 9th of August, 1899: see 62 & 63 Vict. c. 20, s. 1.

Tenants in common.

A tenant in common can convey his own share in his lifetime or devise it by will: 2 Pres. 77.

There is no survivorship between tenants in common; so that on the death of one intestate before 1898, his share, if of inheritance, descends to his heir, or in case of death since the 1st of January, 1898, devolves to his personal representative under the L. T. Act, 1897 (see *ante*, p. 56); while his share, in the case of a term, devolves to his personal representative: see Tud. L. C. 281.

Partners.

Where land is conveyed to partners as joint-tenants, for the purposes of trade, although the legal estate devolves to the surviving partner, he is regarded in equity as a trustee of the share of the deceased partner: see Dart, 961; 53 & 54 Vict. c. 39, s. 20.

The beneficial interest of the partners is personal estate, in the absence of any agreement precluding conversion: *Re Wilson*, (1893) 2 Ch. 340.

But where land is conveyed to them as tenants in common, a title cannot be made to the share of a deceased partner, dying before 1898, without the concurrence of his heir or devisee: see 53 & 54 Vict. c. 39, s. 20; or in case of death since the 1st of January, 1898, of his personal representative: see 60 & 61 Vict. c. 65, s. 1.

Partition.

Partition can be effected by deed where the joint owners are absolutely entitled, or have power to partition or to sell and exchange: *Re Frith & Osborne*, 3 Ch. D. 618; or (where the undivided shares are settled) by the life-tenants under the powers of the Settled Land Act, 1882: see ss. 3, 20, 45.

Sale in partition suit.

Where an estate is vested in several persons as joint-

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tenants or tenants in common, the entirety can be sold under an order of the Court in a partition suit, notwithstanding the dissent or disability of any person interested who is a party to the suit: see 31 & 32 Vict. c. 40, ss. 3—5; his estate being passed by a vesting order: see s. 7; 56 & 57 Vict. c. 53, s. 31; *Basnett* v. *Moxon*, L. R. 20 Eq. 182; *Beckett* v. *Sutton*, 19 Ch. D. 646.

Co-owners do not stand in a fiduciary relation to each other unless they are partners: *Kennedy* v. *De Trafford*, (1897) A. C. 180; *Re Biss*, (1903) 2 Ch. 40; and see *Bevan* v. *Webb*, (1905) 1 Ch. 620.

SECT. IV.

POWERS OF FIDUCIARY AND CORPORATE OWNERS.

Fiduciary and corporate owners.

Under this head it is proposed to consider the power of disposition possessed by mortgagees, executors and administrators, trustees, building societies, friendly societies, joint stock companies and railway companies.

MORTGAGEES.

Mortgagees.

A mortgagee can transfer the mortgage by deed, subject to the existing equity of redemption, but cannot pass an absolute estate, except in the exercise of a power of sale, which may be express or implied: see *Re Ebsworth & Tidy*, 42 Ch. D. 50.

The power of sale is in general only an authority to defeat the equity of redemption, and the mortgagee transfers the legal estate not by means of a power but by virtue of his legal ownership: see *Re Harwood*, 35 Ch. D. 472.

Power of sale. 23 & 24 Vict. c. 145.

A power of sale is implied in all mortgages of freeholds, leaseholds and copyholds, by deed executed between the 28th of August, 1860, and the 31st of December, 1881, after the expiration of one year from the time when the principal has become payable, or after some interest has

been in arrear for six months, or after some omission to pay an insurance premium has been made, provided six months' notice in writing has been given: 23 & 24 Vict. c. 145, ss. 11—15 (repealed by Conv. Act, 1881, but not so as to take away the power of sale implied in a mortgage made between those dates: *Re Solomon & Meagher*, 40 Ch. D. 508).

Conv. Act, 1881.

A power of sale is implied in all mortgages of freeholds, leaseholds and copyholds by deed executed since the 1st of January, 1882, when the mortgage money has become due, provided default has been made for three months after service of notice requiring payment, or some interest is in arrear for two months, or some other provision in the mortgage has been broken: Conv. Act, 1881, ss. 19—22. But no power of sale is implied in the case of debentures: *Blaker* v. *Herts, &c. Co.*, 41 Ch. D. 399.

The statutory power is not excluded by an express power: see *Life Int., &c. Corp.* v. *Hand in Hand Society*, (1898) 2 Ch. 230.

An equitable mortgagee cannot pass the legal estate vested in the mortgagor: *Re Hodson & Howes*, 35 Ch. D. 668; except (1) under the power of sale given by 23 & 24 Vict. c. 145: *Re Solomon & Meagher*, 40 Ch. D. 508; or (2) under a power of attorney; or (3) where the mortgagor declares himself trustee and empowers the mortgagee to appoint new trustees, so that the estate can be passed by a vesting declaration: see *London, &c. Co.* v. *Goddard*, (1897) 1 Ch. 642.

In order that the exercise of a power of sale may confer a good title, the security must be subsisting at the time of sale, and the provisions of the power as to notice must have been complied with, or waived by the owner of the equity of redemption: *Re Thompson & Holt*, 44 Ch. D. 492; unless the purchaser is protected by the terms of the power, as in *Dicker* v. *Angerstein*, 3 Ch. D. 600: or where 'the sale has been effected in professed exercise of the powers' conferred by Ld. Cranworth's Act, 23 & 24

Vict. c. 145, s. 13; or the 'conveyance is made in professed exercise of the power' conferred by the Conv. Act, 1881 (s. 21).

He is not protected if he knows of an irregularity: see *Selwyn* v. *Garfit*, 38 Ch. D. 273.

After an order *nisi* for foreclosure, the power cannot be exercised without leave of the Court: *Stevens* v. *Theatres*, (1903) 1 Ch. 857.

A *bonâ fide* sale under the power is not avoided by part of the purchase money being left on mortgage: *Thurlow* v. *Mackeson*, L. R. 4 Q. B. 97.

The mortgagee can make a title under the power after he has acquired an absolute title by possession: *Re Alison*, 11 Ch. D. 284; or even after a void sale to himself: *Henderson* v. *Astwood*, (1894) A. C. 150.

If the power is expressly exercisable by assigns, it may be exercised by a transferee or his representatives: *Saloway* v. *Strawbridge*, 1 K. & J. 371; even though entitled to the equity of redemption: *Thorne* v. *Cann*, (1895) A. C. 11. But if the power is not clearly intended to be exercisable by assigns, the transferee cannot sell: see *Re Rumney & Smith*, (1897) 2 Ch. 351.

A sale for the exact amount owing is not necessarily invalid, although made immediately after a transfer: *Bailey* v. *Barnes*, (1894) 1 Ch. 25.

The mortgagee cannot sell to himself or to a trustee for himself: see *Farrar* v. *Farrars*, 40 Ch. D. 409: and see *Hodson* v. *Deans*, (1903) 2 Ch. 647.

But he may purchase the equity of redemption from the mortgagor: *Melbourne Bkg. Co.* v. *Brougham*, 7 App. Cas. 307.

There is no objection to one of several mortgagors purchasing: *Kennedy* v. *De Trafford*, (1897) A. C. 180.

Devolution of debt.

On the death of the mortgagee, the right to the mortgage debt vests in his personal representative: 2 Pres. 219.

Devolution of estate.

A mortgagee dying before 1882 could devise the estate,

and mortgage estates of inheritance not disposed of by his will descended like beneficial estates to the heir, who took as trustee for the personal representative: *Re Loveridge*, (1902) 2 Ch. 863; unless the equity of redemption was barred at the death: *Re Loveridge*, (1904) 1 Ch. 518.

But after the 7th of August, 1874, the personal representative of a mortgagee of freeholds, or of copyholds to which the mortgagee had been admitted, could reconvey or surrender on payment of all sums secured: V. & P. Act, 1874, s. 4 (repealed in cases of death after 1881 by the Conv. Act, 1881, s. 30). This enactment did not enable the personal representative to transfer the mortgage: *Re Spradbery*, 14 Ch. D. 514; nor to convey to a purchaser under the power of sale: *Re White*, 29 W. R. 820.

In cases of death since the 1st of January, 1882, estates of inheritance vested in a mortgagee devolve to his personal representative, notwithstanding any devise: Conv. Act, 1881, s. 30: see *Re Pilling*, 26 Ch. D. 432. But on the 16th of September, 1887, this section ceased to apply to copyholds vested in a tenant on the court rolls by way of mortgage: 50 & 51 Vict. c. 73, s. 45; 57 & 58 Vict. c. 46, s. 88; see *Re Mills*, 37 Ch. D. 312.

In the case of leaseholds, the mortgage term devolves to the personal representative.

Joint account.

Where a mortgage is made to several persons as joint-tenants, and one dies, the estate vests in the survivors; but the mortgage debt is presumed to belong to them as tenants in common, and in the case of mortgages made before 1882, the survivors cannot give a discharge for it, or make a title under the power of sale, unless the deed contains a proper joint-account clause or power for the survivors to give receipts: see *Steeds* v. *Steeds*, 22 Q. B. D. 537; *Hind* v. *Poole*, 1 K. & J. 383.

In mortgages made since the 1st of January, 1882, to several persons jointly, a joint-account clause is not needed, as a power for the survivor to give receipts is implied:

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Conv. Act, 1881, s. 61. But payment to one is not a discharge, although he afterwards becomes the survivor: *Powell* v. *Brodhurst*, (1901) 2 Ch. 160.

Trustees.

If the mortgagees appear to be trustees, they should be ascertained to be duly appointed: see *Re Blaiberg & Abrahams*, (1899) 2 Ch. 340; but see *ante*, p. 12.

As to trustees' power to release part of their security, see Lewin, 725.

As to the effect of foreclosure, see *ante*, p. 40.

EXECUTORS AND ADMINISTRATORS.

Executor's power to sell leaseholds.

An executor can sell his testator's leaseholds, although bequeathed by the will, so long as he has not assented to the bequest: 3 Pres. 144; Dart, 616; see *Hood* v. *Barrington*, L. R. 6 Eq. 218. But the legatee's concurrence should be obtained to guard against the risk of the term having passed to him by an assent: see p. 70.

The executor cannot compel a purchaser to complete before probate: Sug. 668; but his assignment is not invalidated by his death without proving, provided the will is ultimately proved: *Brazier* v. *Hudson*, 8 Sim. 67.

He can sell even 20 years after the testator's death: *Re Whistler*, 35 Ch. D. 561; and the title is not rendered doubtful by his assigning as beneficial owner: *Re Venn & Furze*, (1894) 2 Ch. 101.

His receipt is a good discharge for the purchase-money, unless the purchaser has notice that all debts and administration expenses have been paid: 3 Pres. 267; *Re Whistler*, 35 Ch. D. 561; but see *Re Verrell*, (1903) 1 Ch. 65.

One of several executors can sell and assign the whole term: *Cole* v. *Miles*, 10 Ha. 179; See Dart, 601; but it is usual to require the concurrence of all.

The executor's power of sale is not taken away by an

administration suit, so long as there is no injunction or receiver: Sug. 669; *Neeves* v. *Burrage*, 14 Q. B. 504; *Berry* v. *Gibbons*, L. R. 8 Ch. 747.

An executor cannot sell to himself or to his co-executors: see Lewin, 569; but a renouncing executor is not precluded from purchasing: *Clark* v. *Clark*, 9 App. Cas. 733; and see *post*, p. 111.

Power to mortgage.

An executor can mortgage his testator's leaseholds: *Cruikshank* v. *Duffin*, L. R. 13 Eq. 555; *Thorne* v. *Thorne*, (1893) 3 Ch. 196; but the mortgagee does not acquire a title if he knows the money is not required for debts or administration expenses: *Ricketts* v. *Lewis*, 20 Ch. D. 745.

Devolution.

On the death of one of several executors, the testator's leaseholds vest in the survivors: Wms. Ex. 684.

If the sole or surviving executor dies after proving, without having disposed of a term in his lifetime or assented to a bequest thereof, it vests in his executor; but if he dies intestate, it does not pass to his representative, but an administrator *de bonis non* of the original testator has to be appointed to make a title: Wms. Ex. 380; see *Re Murguia*, 9 P. D. 236.

Should the executor, however, be also appointed trustee of the term and assent to the bequest, the term would cease to be part of the assets: see *Dix* v. *Burford*, 19 Beav. 409; and would therefore pass to his own personal representative: see Lewin, 223.

Renunciation.

Renunciation of probate by an executor since the 11th of January, 1858, causes his rights to cease and the representation to the testator to devolve as if he had not been appointed: 20 & 21 Vict. c. 77, s. 79.

The death of an executor since the 2nd of August, 1858, without proving, produces the same effect: 21 & 22 Vict. c. 95, s. 16.

If all the executors renounce, the testator's leaseholds vest in the administrator with the will annexed: *Wyman* v. *Carter*, L. R. 12 Eq. 309.

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Administrator's power to sell.

An administrator has no title before the grant of the letters of administration: see 21 & 22 Vict. c. 95, s. 19; but after the grant he has the same power of disposition *inter vivos* as an executor: Wms. Ex. 315, 694.

An administrator *pendente lite* has the same power of disposition as an ordinary administrator: 20 & 21 Vict. c 77, s. 70; see *Wright* v. *Rogers*, L. R. 2 P. & D. 179; but not after the decree: *Wieland* v. *Bird*, (1894) P. 262.

An administrator *durante minore ætate* has the same power of disposition as an ordinary administrator: *Re Cope*, 16 Ch. D. 49.

But an administrator *durante absentiâ* cannot make a title: *Webb* v. *Kirby*, 7 D. M. & G. 376.

A title cannot (it seems) be made under a grant of administration till a lost will is found, without special words in the grant: *Re Wright*, (1893) P. 21.

Devolution.

If an administrator dies without having disposed of a term in his lifetime, it does not pass to his representatives, but an administrator *de bonis non* of the intestate has to be appointed to make a title: Wms. Ex. 382.

Executor's power to sell real estate.

An executor has power to sell his testator's real estate in the following cases:—

(1) Where the will contains a direction for him to sell, although not accompanied by a devise to him: Sug. Pow. 113; *Hamilton* v. *Buckmaster*, L. R. 3 Eq. 323; and he can pass the estate, 2 Pres. 247.

Davies & Jones 24 Ch D 190.

(2) Where the will contains a direction for sale, without the land being devised or the persons by whom the sale is to be made being named, provided the proceeds are distributable by him, either for payment of debts or legacies, or are blended with the personal estate: 2 Pres. 264; Sug. Pow. 118; Farwell, 72; and he can pass the estate: *Re Sankey*, W. N. 1889, 79.

(3) Where the estate is devised to him charged with debts: *Corser* v. *Cartwright*, L. R. 7 H. L. 731; no inquiry as to the existence of debts being necessary if the sale takes

place within 20 years of the testator's death: *Re Tanqueray-Willaume & Landau*, 20 Ch. D. 465. But a devise to him charged with legacies only, confers no power of sale: *Re Rebbeck*, 42 W. R. 473: see *post*, p. 146.

(4) Where the will comes into operation before the 13th of August, 1859, and contains a charge of debts, and the land is so settled that the devisees cannot sell: *Robinson* v. *Lowater*, 5 D. M. & G. 272: see Sug. 662 n.; Farwell, 79. In this case, however, he cannot pass the legal estate: Dart, 636.

(5) Where the will comes into operation after the 13th of August, 1859, and contains a charge of debts or legacies, without a devise of the testator's whole estate to trustees; 22 & 23 Vict. c. 35, s. 16: see *Re Wilson*, 54 L. T. 600; and he seems able to pass the estate (s. 16): see Dart, 637. But this section does not apply where there is a beneficial devise of the whole estate (s. 18): *Re Rebbeck*, 42 W. R. 473; see Dart, 642; *secus* where there is only a contingent devise: see *Re Barrow Corporation & Rawlinson*, (1903) 1 Ch. 339; and see *post*, p. 146.

(6) Where estate duty is payable in respect of the estate, and the persons accountable request him to pay it: 57 & 58 Vict. c. 30, ss. 6, 9.

(7) Where the testator has died since the 1st of January, 1898, the executor has the same power of sale of freeholds as of leaseholds; but if there are several co-executors, all must join, unless the sale is authorised by the Court: 60 & 61 Vict. c. 65, s. 2; including any who have not proved: *Re Pawley & London, &c. Bank*, (1900) 1 Ch. 58; although special executors appointed in respect of foreign property need not join: *Re Cohen & L. C. C.*, (1902) 1 Ch. 187.

Power to mortgage real estate.

An executor has power to mortgage his testator's real estate in the following cases:—

(1) Where devised to him charged with debts: *Corser* v. *Cartwright*, L. R. 7 H. L. 731.

(2) Where he has power to sell under 22 & 23 Vict. c. 35, s. 16, by reason of a charge of debts or legacies: see *supra*.

(3) Where estate duty is payable in respect of the estate, and the persons accountable request him to pay it: 57 & 58 Vict. c. 30, ss. 6, 9.

(4) In the case of freeholds, where the testator has died since the 1st of January, 1898: see 60 & 61 Vict. c. 65, s. 2.

An administrator with the will annexed has no implied power to sell real estate, either under a charge of debts or by virtue of the Act, 22 & 23 Vict. c. 35: *Re Clay & Tetley*, 16 Ch. D. 3.

But the administrator of a person dying on or after the 1st of January, 1898, has the same power of sale as an executor: 60 & 61 Vict. c. 65, s. 2: see *supra*.

Power to convey land sold by testator.

Where a person, dying on or after the 1st of January, 1882, has contracted to sell his freehold estate of inheritance, his executor or administrator has power to convey for the purpose of giving effect to the contract, if subsisting at the death and enforceable against the heir or devisee: Conv. Act, 1881, s. 4; see Dart, 297; and see *post*, p. 115.

TRUSTEES.

Trustees for sale.

Trustees for sale cannot sell before the time fixed by their trust or power: Dart, 67. Thus, where directed to sell at the death of a life-tenant, they cannot sell during his life, even with his concurrence: *Carlyon* v. *Truscott*, L. R. 20 Eq. 348; *Re Bryant & Barningham*, 44 Ch. D. 218.

They may sell by public auction or private contract, unless a contrary intention is expressed in the trust or power: Sug. 60; 23 & 24 Vict. c. 145, s. 1; Conv. Act, 1881, s. 35; Trustee Act, 1893, s. 13.

They must sell for cash and must not (unless authorised

by the trust) leave the purchase-money on mortgage: see *Webb* v. *Ledsam*, 1 K. & J. 385.

It has been held that they cannot sell leaseholds by way of underlease: *Re Walker & Oakshott*, (1901) 2 Ch. 383.

Where the trust property is an undivided share or other partial interest, they may join with the other owners in selling, provided they apportion the price themselves before completion, and receive their share: *Re Cooper & Allen*, 4 Ch. D. 802; and see Conv. Act, 1881, s. 35; Trustee Act, 1893, s. 13; *Re Parker & Beech*, 56 L. T. 95.

If the sale is under an order and the purchase-money is paid into Court, want of apportionment seems to be immaterial: see *Cavendish* v. *Cavendish*, L. R. 10 Ch. 319.

Depreciatory conditions of sale are no objection to the title in the case of sales made by trustees since the 24th of December, 1888: Trustee Act, 1893, s. 14.

Power to give receipts.

Trustees for sale can only confer a good title where they have power to give a receipt for the purchase-money; if there is no such power, the concurrence of the beneficiaries is necessary: 2 Pres. 220.

A power to give receipts is implied in the following cases:—

(1) Where there is a trust for payment of debts generally, either with or without legacies, but not where the trust is for payment of specified debts or of legacies only: *Howard* v. *Chaffer*, 11 W. R. 1057; see Dart, 615.

(2) Where the trusts require the purchase-money to be paid to the trustees to be invested by them: 2 Pres. 222; Sug. 659.

(3) Where the purchase-money is payable to them upon an express or implied trust created since the 13th of August, 1859: 22 & 23 Vict. c. 35, s. 23.

(4) Before 1882, where the purchase-money was payable to them by reason or in the exercise of a trust or power created since the 28th of August, 1860: 23 & 24 Vict. c. 145, s. 29 (repealed by Conv. Act, 1881).

(5) Since the 1st of January, 1882, where the purchase-money is payable to them under any trust or power, whenever created: Conv. Act, 1881, s. 36; Trustee Act, 1893, s. 20.

All the trustees must join in the receipt, as well as in the conveyance of the estate: 2 Pres. 224; see *Boursot* v. *Savage*, L. R. 2 Eq. 134.

Where trustees have power to give receipts, the trusts of the proceeds of sale are generally regarded as immaterial: 1 Pres. 135; and if declared by a separate deed, its production cannot usually be required: Sug. 418.

Exception:—In the case of a power of sale, the trusts of the proceeds are material by reason of the 10th section of 23 & 24 Vict. c. 145, and the 56th section of the Settled Land Act, 1882.

Duration of power.

A trust for sale is not put an end to by all the beneficiaries becoming absolutely entitled, as any one of them can require the trust to be executed: *Biggs* v. *Peacock*, 22 Ch. D. 284; *Re Tweedie & Miles*, 27 Ch. D. 315; and the trust seems to be exercisable until all the beneficiaries elect to put an end to it: see *Re Douglas & Powell*, (1902) 2 Ch. 296.

A power of sale is exercisable as long as a settled estate is subsisting in any part of the property: *Re Brown*, L. R. 10 Eq. 349; but cannot be exercised after all the beneficiaries are *sui juris* and have acquired absolute interests: Sug. Pow. 859, 860; unless a contrary intention is shown in the instrument creating the power: *Re Cotton & L. S. Bd.*, 19 Ch. D. 624; as where it is given for the purpose of division: *Re Sudeley & Baines*, (1894) 1 Ch. 334; and see *Re Dyson & Fowkes*, (1896) 2 Ch. 720; *Re Jump*, (1903) 1 Ch. 129. It is not necessarily extinguished by a resettlement: *Re Wright & Marshall*, 28 Ch. D. 93.

Consent of life-tenant.

If a person is appointed by the instrument creating the power to consent to its exercise, such consent must be obtained: Sug. Pow. 252.

A power of sale in an instrument executed on or after the 28th of August, 1860, when no such person was appointed, could not be exercised before 1883 without the consent of the person entitled to the rents, if *sui juris*, unless it appeared from the instrument to have been intended that a sale should be made without such consent: 23 & 24 Vict. c. 145, s. 10 (repealed by S. L. Act, 1882).

Since the 1st of January, 1883, trustees have been unable to exercise a power of sale without the consent of the tenant for life: see S. L. Act, 1882, s. 56; *Re Clitheroe*, 31 Ch. D. 135; but if several persons together constitute the tenant for life, the consent of one of them is sufficient: S. L. Act, 1884, s. 6. Where, however, an estate was settled in undivided shares, the power was held not to be exercisable without the consent of the life-tenants of all the settled shares: *Re Osborne & Bright*, (1902) 1 Ch. 335: *sed qu.*

An absolute trust for sale may be executed without the concurrence of the tenant for life: S. L. Act, 1884, s. 6: see *Taylor* v. *Poncia*, 25 Ch. D. 646; but the trust cannot be executed if the Court has made an order giving the tenant for life leave to exercise the power of sale conferred by sect. 63 of the Act of 1882: see S. L. Act, 1884, s. 7. A purchaser from the trustees, however, is not affected by the order, unless registered as a *lis pendens* against them (s. 7).

Where the trust or power is exercisable with the consent of the life-tenant, and he assigns his interest, or becomes bankrupt, the concurrence of the assignee or trustee in bankruptcy is also necessary: *Alexander* v. *Mills*, L. R. 6 Ch. 124; *Re Bedingfield & Herring*, (1893) 2 Ch. 332.

The trustees cannot sell pending an administration suit, without the leave of the Court: Sug. 63; but after final further consideration, leave is not required: see *Re Mansel*, 33 W. R. 727.

Sale by Court.

It is essential to the validity of a sale under an order of

the Court that the terms of the order be complied with: Sug. 110: *Berry* v. *Gibbons*, L. R. 15 Eq. 150.

The order binds the equities of persons unborn or unascertained: see *Basnett* v. *Moxon*, L. R. 20 Eq. 184; and cannot be invalidated as against a purchaser for want of jurisdiction, or for 'want of any concurrence, consent, notice or service': Conv. Act, 1881, s. 70; *Re Whitham*, 49 W. R. 597; but it does not bind other persons not parties to it: *Jones* v. *Barnett*, (1900) 1 Ch. 370; except owners of equities intended to be bound: *Mostyn* v. *Mostyn*, (1893) 3 Ch. 376; and does not pass the legal estate without a vesting order: see *Freeland* v. *Pearson*, L. R. 7 Eq. 246; and see *ante*, p. 43.

Settled Estates Acts.

Where a settled estate is sold by the Court under the Settled Estates Act, 1856, or the Settled Estates Act, 1877, a conveyance by the person directed by the Court to convey, takes effect as if the settlement had contained a power enabling him to effect the sale, so as to operate by revocation and appointment of the use: see S. E. Act, 1856, s. 15; S. E. Act, 1877, s. 22; *Eyre* v. *Sanders*, 28 L. J. Ch. 439; and cannot be invalidated as against a purchaser for want of any concurrence or consent required by the Act: Conv. Act, 1881, s. 70; *Re Hall Dare*, 21 Ch. D. 41. The purchase-money has to be paid into Court or to trustees approved by the Court: S. E. Act, 1856, s. 23; S. E. Act, 1877, s. 34.

Implied power of sale.

A power to vary investments authorises the sale of land in which the trust funds are invested: *Re Garnett Orme & Hargreaves*, 25 Ch. D. 595; *Re Gent & Eason*, (1905) 1 Ch. 386; and see *Tait* v. *Lathbury*, L. R. 1 Eq. 174.

Statutory power of sale.

Trustees have a statutory power of sale in the following cases:—

(1) Where by a will coming into operation since the 13th of August, 1859, real estate is devised to them for the testator's whole estate, charged with debts or legacies, without

any provision for raising the same: 22 & 23 Vict. c. 35, s. 14; but not where they do not take the whole estate: *Re Adams & Perry*, (1899) 1 Ch. 554.

(2) Where they are trustees for the purposes of the Settled Land Act, 1882, and the life-tenant is an infant: S. L. Act, 1882, s. 60; see *ante*, p. 85.

(3) Where they are trustees for the purposes of the Settled Land Act, 1882, and the life-tenant is purchasing: S. L. Act, 1890, s. 12.

(4) Where they have to pay estate duty in respect of the property: 57 & 58 Vict. c. 30, s. 9.

Purchase by trustees.

The trustees may sell to the life-tenant even though the power be only exercisable with his consent: *Dicconson* v. *Talbot*, L. R. 6 Ch. 32.

A trustee cannot purchase from himself, either directly or indirectly: Lewin, 562; and a title depending on an attempted purchase of this kind is bad and can only be confirmed by a conveyance from all the beneficiaries: see *Williams* v. *Scott*, (1900) A. C. 499; but a trustee who has retired for some years may purchase: *Re Boles & British Land Co.*, (1902) 1 Ch. 244; and a re-purchase by a trustee after a *bonâ fide* sale to a stranger, is valid, although made within a few months of the sale, and at the same price: *Re Postlethwaite*, 37 W. R. 200; *secus* if made before completion: see *Delves* v. *Gray*, (1902) 2 Ch. 606.

A trustee may purchase from the beneficiaries: Lewin, 566; and unless there appears to be something inequitable in the transaction, a purchaser from him acquires a good title: Sug. 695.

New trustees.

New trustees, duly appointed under a power contained in a deed or will, are considered to have the same power of disposition as the original trustees: see Lewin, 743; and this is expressly so provided as to trustees appointed under the statutory powers conferred by 23 & 24 Vict. c. 145, s. 27, the Conv. Act, 1881, s. 31, and the Trustee

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Act, 1893, s. 10; but (except in cases where they have power to appoint a use), they cannot pass the estate until it has been transferred to them by conveyance, vesting order, or vesting declaration.

Trustees appointed by the Court under the Trustee Acts, had before the 28th of August, 1860, the same powers as trustees appointed in a suit: 13 & 14 Vict. c. 60, s. 33 (repealed by Trustee Act, 1893): see Lewin, 743.

All trustees appointed by the Court have had (since the 28th of August, 1860) the same powers as if they had been appointed by the trust deed or will: 23 & 24 Vict. c. 145, s. 27: Conv. Act, 1881, s. 33; Trustee Act, 1893, s. 37.

In every case of appointment of trustees, or of their retirement under the power conferred by the Conv. Act, 1881 (s. 32), or the Trustee Act, 1893 (s. 11), it should be seen that the power is strictly followed.

The donee of a power of appointing new trustees cannot in general appoint himself: *Re Skeats*, 42 Ch. D. 522; *Re Newen*, (1894) 2 Ch. 297; but see *Montefiore* v. *Guedalla*, (1903) 2 Ch. 723.

Where the power is given to the life-tenant, he may exercise it after assigning his interest: *Hardaker* v. *Moorhouse*, 26 Ch. D. 417.

Trustees without power of sale.

A trustee without power of sale, although able to convey the estate, cannot make a good title without the concurrence of the beneficiaries: 2 Pres. 228; *Re Adams & Kensington Vestry*, 27 Ch. D. 394; *Lee* v. *Soames*, 36 W. R. 884: see *post*, p. 141; but if he conveys by direction of the beneficiaries, both the legal estate and beneficial interest pass: 2 Pres. 234; unless the beneficiaries are tenants in tail or under disability: 3 Pres. 27.

The want of a power of sale in a settlement cannot be supplied by a subsequent deed: see *Perrins* v. *Bellamy*, (1899) 1 Ch. 798.

Where trustees have invested in land without authority,

they can sell and make a title so long as the beneficiaries are not all competent and desirous to take the land *in specie*: *Re Jenkins & Randall*, (1903) 2 Ch. 362; and if all the beneficiaries are *sui juris*, the trustees can sell with the concurrence of any one of them: *Re Patten & Edmonton*, 52 L. J. Ch. 787.

Power to mortgage.

Trustees have in general no power to mortgage in the absence of an express power: see *Stroughill* v. *Anstey*, 1 D. M. & G. 635; *Re Jones*, 38 W. R. 90.

Exceptions:—

(1) Before 1883 they had power to mortgage for raising money required for equality of exchange or for renewal of leases, where the trust was created on or after the 28th of August, 1860: 23 & 24 Vict. c. 145, s. 9 (repealed by S. L. Act, 1882).

(2) They have power to mortgage where there is a devise with a charge of debts or legacies, giving them power to sell under 22 & 23 Vict. c. 35, s. 14: see p. 110.

(3) They have power to mortgage for the purpose of raising estate duty: 57 & 58 Vict. c. 30, s. 9.

Disclaimer.

If the sole trustee of a settlement disclaims, the estate revests in the settlor who is bound by the trust: *Mallott* v. *Wilson*, (1903) 2 Ch. 494; and if a sole devisee in trust disclaims, his estate vests in the heir, who is bound by the trust, though he cannot execute it: *Robson* v. *Flight*, 4 D. J. & S. 608.

If one of several trustees disclaims, the whole estate vests in the others, and they can execute the trust or power without him: Lewin, 218; see *Crawford* v. *Forshaw*, (1891) 2 Ch. 261; and see Conv. Act, 1882, s. 6.

A trustee cannot disclaim after he has acted: see *Re Arbib & Class*, (1891) 1 Ch. 615. A partial disclaimer is inoperative: *Re Lord & Fullerton*, (1896) 1 Ch. 228.

Disclaimer of the trusteeship is a sufficient disclaimer of the estate: *Re Birchall*, 40 Ch. D. 436.

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Survivorship.

Where the estate is vested in trustees for sale as joint-tenants, the surviving trustee can sell: 2 Pres. 254; Sug. 664; see *ante*, p. 96.

But a mere power created before 1882 seems not to survive, unless it is given to them by a general description as 'executors' or 'trustees': Sug. Pow. 128; and then only so long as there are several: Farwell, 456.

When a trust or power created since the 1st of January, 1882, is given to trustees jointly, it is exercisable by the survivor, in the absence of any provision to the contrary: Conv. Act, 1881, s. 38; Trustee Act, 1893, s. 22.

Devolution at death.

Before 1882, a sole trustee (other than a 'bare trustee' dying between the 7th of August, 1874, and the 31st of December, 1875), could devise trust estates of inheritance: see p. 27; and the devisee could execute the trust for sale if assigns were mentioned in the trust: see Dart, 624; compare *Osborne to Rowlett*, 13 Ch. D. 774, and *Re Morton & Hallett*, 15 Ch. D. 143.

Before 1882, trust estates of inheritance, not disposed of by will, descended like beneficial interests to the heir (except in the case of a 'bare trustee' dying on or after the 7th of August, 1874); and the heir, if named, could execute the trust for sale: *Re Morton & Hallett*, 15 Ch. D. 143; *Re Cunningham & Frayling*, (1891) 2 Ch. 567. If the trustee died without heirs, the estate could be passed by a vesting order: 13 & 14 Vict. c. 60, s. 15; Trustee Act, 1893, s. 26; see Tud. L. C. 222.

Bare trustee.

On the death of a 'bare trustee' between the 7th of August, 1874, and the 31st of December, 1875, estates of which he was seised in fee vested in his personal representative: V. & P. Act, 1874, s. 5 (repealed, except as to anything duly done thereunder before the 1st of January, 1876, by 38 & 39 Vict. c. 87, s. 48).

On the death of a 'bare trustee' intestate between the 1st of January, 1876, and the 31st of December, 1881, estates of which he was seised in fee vested in his personal

representative (except in the case of lands registered under the Land Transfer Act, 1875): 38 & 39 Vict. c. 87, s. 48 (repealed in cases of death after 1881 by the Conv. Act, 1881, s. 30).

A 'bare trustee' seems to be a trustee who has neither any beneficial interest nor any active duties to perform: *Christie* v. *Ovington*, 1 Ch. D. 279; *Morgan* v. *Swansea, &c. Authority*, 9 Ch. D. 582; *Re Cunningham & Frayling*, (1891) 2 Ch. 567.

Conv. Act, 1881.

On the death of a sole trustee since the 1st of January, 1882, estates of inheritance vested in him devolve to his personal representative, notwithstanding any devise, and such representative is the proper person to execute the trust: Conv. Act, 1881, s. 30; see *Pixton* v. *Tong*, 46 W. R. 187.

But on the 16th of September, 1887, this section ceased to apply to copyholds vested in a tenant on the court rolls upon any trust: 50 & 51 Vict. c. 73, s. 45; 57 & 58 Vict. c. 46, s. 88; see *Re Mills*, 37 Ch. D. 312.

Vendor.

A vendor of freeholds is a constructive trustee, but if he died before 1898, the estate devolved on the heir or devisee: see *Lysaght* v. *Edwards*, 2 Ch. D. 499, subject to the power of the personal representative to convey if the death was after the 31st of December, 1881 (see *ante*, p. 106): the case being apparently untouched by sect. 30 of the Conv. Act, 1881. In the case of death since the 1st of January, 1898, the estate devolves to the vendor's personal representative: 60 & 61 Vict. c. 65, s. 1. The right to the purchase-money in general passes to the personal representative, both where the owner dies after contracting to sell (*Re Manchester, &c. R. Co.*, 19 Beav. 365), and where he dies after granting an option of purchase, and the option is exercised after his death: *Re Isaacs*, (1894) 3 Ch. 506. But the devisee takes the purchase-money if such an intention is shown by the will: *Re Pyle*, (1895) 1 Ch. 724.

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Leaseholds vested in a sole trustee at his death, devolve on his personal representative: Lewin, 243.

Leaseholds.

Bankruptcy.

The estate of a trustee is not divested by his bankruptcy: see Lewin, 263; B. Act, 1869, s. 15; B. Act, 1883, s. 44; *Heritable, &c. Co.* v. *Millar*, (1892) A. C. 598.

Charity trustees.

Trustees of an endowed charity can only sell land forming part of the endowment under the express authority of an Act of Parliament, or of the Court, or according to a scheme legally established, or with the approval of the Charity Commissioners: 16 & 17 Vict. c. 137, ss. 24, 26; 18 & 19 Vict. c. 124, ss. 29, 38; notwithstanding an express power of sale in the trust deed: *Re Mason's Orphanage & N. W. R. Co.*, (1896) 1 Ch. 596.

Between the 28th of August, 1860, and the 11th of August, 1869, a majority of two-thirds of the trustees, assembled at a meeting duly constituted, had power to pass the legal estate for giving effect to a sale which they had power to determine on: 23 & 24 Vict. c. 136, s. 16 (repealed by 32 & 33 Vict. c. 110); and a majority of the trustees present at such a meeting and voting on the question have, and are deemed to have always had, the same power: 32 & 33 Vict. c. 110, s. 12; see Lewin, 634.

The above Acts do not apply to charities wholly maintained by voluntary contributions, or to charity land purchased by voluntary subscriptions: 16 & 17 Vict. c. 137, s. 62; 18 & 19 Vict. c. 124, s. 48; see *Re Clergy Corpn.*, (1894) 3 Ch. 145; unless extended to them by order of the Charity Commissioners under 32 & 33 Vict. c. 110, s. 14; and where the Acts do not apply, charity trustees can sell, if expressly authorised by the trust, without the sanction of the Commissioners: see *Royal Society & Thompson*, 17 Ch. D. 407; *Finnis to Forbes*, 24 Ch. D. 591.

If land devised for charitable purposes under the powers of the Mortmain, &c. Act, 1891, is not sold within a year

from the testator's death, or such extended period as may be fixed by the Court or the Commissioners, it vests in the official trustee of charity lands: 54 & 55 Vict. c. 73, s. 6; *secus* if devised upon trust for sale: *Re Sidebottom*, (1902) 2 Ch. 389.

Peto's Act.

Where land has been assured to trustees for religious or educational purposes, it vests in the trustees for the time being on their appointment, without any conveyance, provided the appointment is evidenced by a deed in the form of the schedule to the Act 13 & 14 Vict. c. 28, executed by the chairman in the presence of the meeting at which it is made, and attested by two witnesses: 13 & 14 Vict. c. 28; see 53 & 54 Vict. c. 19.

BUILDING SOCIETIES.

Building Societies Act of 1836.

Building societies established under the Act of 6 & 7 Will. IV. c. 32 are not incorporated but have power to take mortgages of real estate in the name of a trustee, which on his death or removal vest in the succeeding trustee, without any assignment: see ss. 1, 4; 10 Geo. IV. c. 56, ss. 13, 21.

Mortgage vacated by indorsed receipt.

A mortgage by a member to the trustees of such a society may be vacated by a receipt indorsed by the trustees named in the mortgage or the survivor or survivors of them or the trustees for the time being, for all moneys intended to be secured, which vests the estate in 'the person or persons for the time being entitled to the equity of redemption,' without any reconveyance: 6 & 7 Will. IV. c. 32, s. 5: see *infra*.

The receipt has to be in the form specified in the schedule to the certified rules of the society (s. 5).

The Act of 1836 is repealed as from the 25th of August, 1896, as to all societies certified thereunder after 1856; 57 & 58 Vict. c. 47, s. 25.

Act of 1874.

Building societies incorporated by certificate under the

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Building Societies Act, 1874, have power to hold land by way of mortgage with the right of foreclosure: 37 & 38 Vict. c. 42, s. 13.

On a building society certified under the Act of 1836 becoming incorporated under the Act of 1874, all mortgages held in trust for the society vest in it without any conveyance: 37 & 38 Vict. c. 42, s. 27; 40 & 41 Vict. c. 63, ss. 3, 4.

Reconveyance.

A mortgage to a society under the Act of 1874 may be vacated by a reconveyance under its common seal: 37 & 38 Vict. c. 42, s. 42; see *Carlisle Banking Co.* v. *Thompson*, 28 Ch. D. 398.

Indorsed receipt.

An indorsed or annexed receipt under the society's common seal countersigned by the secretary or manager, in the form specified in the schedule to the Act of 1874, vacates a mortgage given to a society under the Act, and vests the estate in 'the person for the time being entitled to the equity of redemption,' without any reconveyance: 37 & 38 Vict. c. 42, s. 42.

Any provisions in the rules of the society as to the use of its common seal have to be observed: see s. 16; and see *Fourth City Mutual B. Soc.* v. *Williams*, 14 Ch. D. 143.

Effect of indorsed receipt.

The effect of the indorsed receipt under either Act, where the equity of redemption is incumbered, is to vest the estate, not necessarily in the next incumbrancer in point of time, but in the person having the best right to call for it: *Fourth City Mutual B. Soc.* v. *Williams*, 14 Ch. D. 140; *Hosking* v. *Smith*, 13 App. Cas. 582; and this right is generally acquired by a person paying off the mortgage: *Sangster* v. *Cochrane*, 28 Ch. D. 298. Hence in considering the effect of an indorsed receipt, it should be ascertained by whom the mortgage was paid off, and whether there was, at the time, any subsequent incumbrance. The indorsed receipt is conclusive evidence of repayment: *Harvey* v. *Municipal, &c. Soc.*, 26 Ch. D. 273; but see *Lloyds Bk.* v. *Bullock*, (1896) 2 Ch. 192.

Transfer.

It is doubtful whether a building society's mortgage can be transferred to a stranger without the consent of the mortgagor: see *Re Rumney & Smith*, (1897) 2 Ch. 351.

Stamps.

Prior to the 31st of July, 1868, mortgages to a building society established under the Act of 1836, and statutory receipts on redemption, were exempt from stamp duty by virtue of 6 & 7 Will. IV. c. 32, s. 4, and 10 Geo. IV. c. 56, s. 37: *Thorn* v. *Croft*, L. R. 3 Eq. 193.

This exemption does not extend to any mortgage made since the 31st of July, 1868, except a mortgage by a member securing money not exceeding £500: 31 & 32 Vict. c. 124, s. 11; 33 & 34 Vict. c. 97, s. 112; 54 & 55 Vict. c. 39, s. 89; but statutory receipts seem to be still exempt.

Mortgages to a building society incorporated under the Act of 1874, are not exempt from duty; but reconveyances and statutory receipts on redemption are exempt: see 37 & 38 Vict. c. 42, s. 41; *Old Battersea, &c. Soc.* v. *I. R. Comrs.*, (1898) 2 Q. B. 294.

Cancelled registry.

If the registry of a society under the Act of 1874 is cancelled or suspended, its privileges under the Act cease: 57 & 58 Vict. c. 47, s. 6.

Winding up.

If a society under the Act of 1836 is ordered to be wound up by the High Court (see 25 & 26 Vict. c. 89, s. 199) or by a county court (see 53 & 54 Vict. c. 63, s. 1), the property vested in its trustees may be passed to the liquidator by a vesting order under 25 & 26 Vict. c. 89, s. 203; and he has the same power of sale as the liquidator of a company; see *Re Britannia, &c. Soc.*, 63 L. T. 304. If several liquidators are appointed, they must all join in a conveyance to pass the legal estate (notwithstanding an order that acts may be done by any two of them): *Re Ebsworth & Tidy*, 42 Ch. D. 23.

If a society under the Act of 1874 is ordered to be

wound up by a county court (see 37 & 38 Vict. c. 42, ss. 4, 32), or by the High Court (see 57 & 58 Vict. c. 47, s. 8), it is conceived that the liquidator has the same power of sale as the liquidator of a company, executing conveyances in the name of the society under its common seal.

But where the winding-up order has been made by a county court, the jurisdiction to make the order should be ascertained, as sect. 70 of the Conv. Act, 1881, does not apply: see *Re Bowling & Welby*, (1895) 1 Ch. 663.

The provisions as to revesting the estate by an indorsed receipt, seem to be inapplicable after a winding-up order; but see 57 & 58 Vict. c. 47, s. 9.

As to the effect of dissolution under sect. 32 of the Act of 1874, see 57 & 58 Vict. c. 47, s. 9: *Dennison* v. *Jeffs*, (1896) 1 Ch. 611.

FRIENDLY SOCIETIES.

Friendly Societies.

Friendly societies are not incorporated, but societies registered under the Friendly Societies Act, 1875, or the Friendly Societies Act, 1896, may (if the rules so provide) hold land in the names of their trustees, who have power to sell and mortgage: see 38 & 39 Vict. c. 60, s. 16; 50 & 51 Vict. c. 56, s. 6; 59 & 60 Vict. c. 25, s. 47.

Property belonging to a registered society vests in the trustees for the time being, and on the death, resignation, or removal of a trustee, vests in the succeeding trustees without conveyance or assignment: 38 & 39 Vict. c. 60, s. 16; 59 & 60 Vict. c. 25, ss. 49, 50.

Indorsed receipt.

A mortgage belonging to a registered society may be vacated by an indorsed or annexed receipt under the hands of the trustees, countersigned by the secretary, in the form prescribed by the Act, for all moneys secured thereby, which vests the property in the person entitled to the equity of redemption, without reconveyance or resurrender:

38 & 39 Vict. c. 60, s. 16; 59 & 60 Vict. c. 25, s. 53: see *ante*, p. 118.

If the society executes a reconveyance, the estate passes to the grantee in the ordinary way: *Carlisle Banking Co.* v. *Thompson*, 28 Ch. 398. Reconveyance.

Mortgages to friendly societies are liable to stamp duty; although statutory receipts seem to be exempt: see 38 & 39 Vict. c. 60, s. 15; 58 & 59 Vict. c. 26, s. 5; 59 & 60 Vict. c. 25, s. 33: *Re Royal Liver Friendly Society*, L. R. 5 Ex. 78. Stamps.

If the registry of a society is suspended or cancelled, its privileges under the Act cease: 38 & 39 Vict. c. 60, s. 12; 59 & 60 Vict. c. 25, s. 77.

As to dissolution, see 38 & 39 Vict. c. 60, s. 25; 59 & 60 Vict. c. 25, ss. 78—80.

JOINT STOCK COMPANIES.

A trading company, incorporated by registration under the Companies Act, 1862, has power to hold land: 25 & 26 Vict. c. 89, ss. 18, 176; and has full power of disposition by deed under its common seal, unless limited by its memorandum or articles of association: *Re Patent File Co.*, L. R. 6 Ch. 83; *Gen. Auction, &c. Co.* v. *Smith*, (1891) 3 Ch. 432; *Re Payne*, (1904) 2 Ch. 608. Joint Stock Companies.

The issue of debentures as a floating security does not in general interfere with the company's power of disposition, so long as there is no receiver or winding-up order: see *Wheatley* v. *Silkstone, &c. Co.*, 29 Ch. D. 715; *Govt. Stocks, &c. Co.* v. *Manila R. Co.*, (1897) A. C. 81. Debentures.

But the form of the debentures may render it necessary for a purchaser to ascertain that no default has been made: see *Re Horne & Hellard*, 29 Ch. D. 736.

Winding up by Court.

An order made by the Court for winding up a company does not divest its property, but the liquidator appointed by the Court has power to sell the company's property and execute conveyances in the name of the company, using its common seal; but the sanction of the Court is required, unless the winding-up order has been made since the 1st of January, 1891: 25 & 26 Vict. c. 89, s. 95; 53 & 54 Vict. c. 63, ss. 12, 31. If several persons are appointed liquidators, one of them cannot act alone unless so authorised by the order appointing them: see 25 & 26 Vict. c. 89, s. 92; and see *Re Ebsworth & Tidy*, 42 Ch. D. 49, 52.

Where a winding-up order has been made by a county court under 53 & 54 Vict. c. 63, that court has the same powers as the High Court (s. 1). But the jurisdiction to make the order should be ascertained, as sect. 70 of the Conv. Act, 1881, does not apply: see *Re Bowling & Welby*, (1895) 1 Ch. 663.

Voluntary winding up.

Where a special or extraordinary resolution is passed for winding up a company voluntarily, its corporate state and powers continue until fully wound up, and the liquidator appointed by the resolution may, without the sanction of the Court, exercise all the powers of a liquidator appointed by the Court; but if several liquidators are appointed, one of them cannot act alone, unless so authorised by the resolutions: 25 & 26 Vict. c. 89, ss. 131, 133; *Re Met. Bk. & Jones*, 2 Ch. D. 366: see *Re Watson & Sons*, (1891) 2 Ch. 55.

The liquidators in a voluntary winding up under the Act of 1862 may (with the sanction of a special resolution) sell to another company in consideration of shares; but the sale is liable to be set aside in the event of a winding-up order being made within a year: 25 & 26 Vict. c. 89, s. 161; see *Re Callao Bis Co.*, 42 Ch. D. 169.

Winding up under supervision.

Where an order has been made for winding up a company subject to the supervision of the Court, the

liquidators appointed by the company together with those appointed by the Court (if any), have the same powers as the liquidators in a voluntary winding up, subject to any restrictions imposed by the Court: 25 & 26 Vict. c. 89, ss. 150, 151: see *Re Watson & Sons*, (1891) 2 Ch. 55.

As to the effect of dissolution on any legal estate in the company, see *Pryce-Jones* v. *Williams*, (1902) 2 Ch. 517; *Re Gen. Accident, &c. Corp.*, (1904) 1 Ch. 147; *Re Mills & Co.*, (1905) W. N. 36.

RAILWAY COMPANIES.

Railway companies.

A railway company which acquires land under statutory powers has no power of alienation except such as is conferred by statute: *Mulliner* v. *Midland R. Co.*, 11 Ch. D. 611.

L. C. C. Act, 1845.

But where the company's special Act, passed after the 8th of May, 1845, authorises the purchase or taking of land for its undertaking, the Lands Clauses Consolidation Act, 1845, applies (unless expressly excluded): 8 & 9 Vict. c. 18, s. 1; and confers the following power of disposition:—

Land acquired for extraordinary purposes.

(1) The company is empowered to sell land acquired for extraordinary purposes (s. 13); and the provisions as to superfluous land do not apply to such a sale: *City of Glasgow R. Co.* v. *Caledonian R. Co.*, L. R. 2 H. L. Sc. 160.

Superfluous land.

(2) The company is empowered to sell its superfluous land (s. 127).

Land under a railway arch or over a tunnel is not superfluous, and therefore cannot be sold: *Mulliner* v. *Midland R. Co.*, 11 Ch. D. 611; *Re Met. Distr. R. Co. & Cosh*, 13 Ch. D. 607; but a purchaser would acquire a title by possession under the Statute of Limitations: see *Rosenberg* v. *Cook*, 8 Q. B. D. 162.

The sale must be within the period prescribed by the company's special Act; see *Goldsmiths' Co.* v. *W. Metr. R.*

Co., (1904) 1 K. B. 1; or (if none is prescribed) within ten years after the time fixed for the completion of the works: otherwise the land vests in the adjoining owners (s. 127): *G. W. R. Co.* v. *May*, L. R. 7 H. L. 283.

To make a good title, all rights of pre-emption of the original and adjoining owners under s. 128 must be shown to have ceased, unless the land is 'situate within a town' or 'built upon or used for building purposes': see s. 129; Dart, 762; *S. W. R. Co.* v. *Blackmore*, L. R. 4 H. L. 610.

The Company must sell absolutely (s. 127): see *Re Thackwray & Young*, 40 Ch. D. 34. If an option of repurchase is reserved, the sale is *ultra vires* and void: *S. W. R. Co.* v. *Gomm*, 20 Ch. D. 562; see *Ray* v. *Walker*, (1892) 2 Q. B. 88; but conditions restricting the user of the land do not invalidate the sale: *Re Higgins & Hitchman*, 21 Ch. D. 95.

Statutory restrictions as to user, in abeyance during the company's ownership, revive on a sale: *Bird* v. *Eggleton*, 29 Ch. D. 1012.

The conveyance has to be under the company's common seal, and a receipt under the common seal or signed by two directors is sufficient (s. 131).

CHAPTER V.

EVIDENCE OF TITLE.

NOTHING in the abstract must be taken upon trust; but all the abstracted deeds and documents must be verified, and all facts material to the title, such as births, deaths, and marriages, failure of issue, survivorship, intestacy, heirship, and performance of conditions must be proved, except so far as the right to evidence is limited by the contract: see Dart, 365. But it is not the practice to require the formal evidence which would be necessary in an action, without some special reason: Sug. 417.

In considering what evidence is necessary to support the title, two objects must be kept in view:—

(1) That a safe holding title be obtained;

(2) That the evidence be such as would satisfy a purchaser on a re-sale: see 3 Pres. 19; Sug. 417.

The vendor is bound to produce such evidence as is in his possession: see Sug. 416; but the cost of obtaining any evidence which is not in his possession has to be borne by the purchaser: Conv. Act, 1881, s. 3 (6); see *Re Edwards & Green*, 58 L. T. 789; *Re Stuart & Olivant*, (1896) 2 Ch. 328; but see *post*, p. 137.

The evidence usually required to be furnished in verification of an abstract is as follows:—

Acknowledgment, by married women of deeds executed before 1883, is proved by an office copy of the certificate of acknowledgment: 3 & 4 Will. IV. c. 74, s. 88; Conv. Act, 1882, s. 7. An indorsed memorandum of acknowledgment is not sufficient, as the acknowledgment

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has no effect unless the certificate is filed: *Jolly* v. *Handcock*, 7 Ex. 820.

In the case of deeds executed since the 1st of January, 1883, an indorsed memorandum of acknowledgment signed by one commissioner is conclusive evidence: Conv. Act, 1882, s. 7.

Act of Parliament (Private), is proved by a King's printer's copy: Sug. 414; Dart, 345.

Administrator, appointment of, is proved by the letters of administration: Cov. 209: or by an official certificate of the grant: see 20 & 21 Vict. c. 77, s. 69.

Admittance to copyholds, is proved by the copy of court roll, signed by the steward: Cov. 157. It is not usual to require the steward's signature to be verified: Sug. 417; Dart, 346.

Age, is sufficiently proved by a certificate of birth, or baptism: see Cov. 281; and see **Birth.**

Annuity (Life), cessation of, is proved by a receipt for the last payment, signed by the annuitant's personal representative, whose appointment is verified by the production of the probate or letters of administration: see Sug. 415; *Mitchell* v. *Holmes*, L. R. 8 Ex. 119.

Appointment, default of, seems to be sufficiently proved by a written statement of the solicitor of the person empowered to appoint, that he has reason to believe that no appointment has been made; see Sug. 416; *Re Cull*, L. R. 20 Eq. 561.

Attorney (Power of), non-revocation of, is sufficiently proved by evidence of the principal having survived the execution of the power: Cov. 37; Sug. 417; unless the

power was voluntary, in which case inquiry should also be made whether any deed of revocation has been executed, and search should be made against the principal in bankruptcy: see Dart, 347; *Ex parte Snowball*, L. R. 7 Ch. 534; and see *ante*, p. 21.

Award (Inclosure), is proved by an office copy or extract: Sug. 414; Dart, 346; 8 & 9 Vict. c. 118, s 146; and see *ante*, p. 38.

Award (Enfranchisement), under the Copyhold Acts, 1841 to 1887, is proved by a copy under the seal of the Copyhold Commissioners or Land Commissioners: 15 & 16 Vict. c. 51, s. 49: S. L. Act, 1882, s. 48.

Under the Copyhold Act, 1894, by a copy under the seal of the Board of Agriculture: 52 & 53 Vict. c. 30, s. 7; see 57 & 58 Vict. c. 46, s. 10.

Bankruptcy, adjudication, is proved by an office copy of the order, or by a copy of the London Gazette in which it is published, and annulment is proved in the same way; B. Act, 1849, ss. 236, 240; B. Act, 1861, ss. 191, 203; B. Act, 1869, ss. 10, 81, 107; B. Act, 1883, ss. 35, 132, 134.

Official assignee, appointment of, under the Act of 1849 or 1861, is proved by an office copy of the appointment or certificate; B. Act, 1849, ss. 102, 236; B. Act, 1861, s. 203; B. Rules of Oct. 1852, r. 121.

Creditors' assignee, appointment of, under the Act of 1849 or 1861, is proved by an office copy of the certificate of appointment: B. Act, 1849, s. 236; B. Act, 1861, ss. 123, 203.

Trustee, appointment of, under the B. Act, 1869, is proved by an office copy of the certificate of appointment (ss. 18, 107).

Trustee, appointment of, under the B. Act, 1883, is proved by the certificate of the Board of Trade (ss. 138, 140).

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Certificate of conformity, under the B. Act, 1849, is proved by an office copy (s. 236).

Discharge of bankrupt, is proved by an office copy of the order of discharge: B. Act, 1861, ss. 161, 203; B. Act, 1869, ss. 49, 107; B. Act, 1883, ss. 30, 134.

Close of bankruptcy under the B. Act, 1869, is proved by an office copy of the order, or by a copy of the London Gazette in which it is published (ss. 47, 107).

Birth, is proved by a certificate of birth under the seal of the General Register Office; 6 & 7 Will. IV. c. 86, s. 38; see 37 & 38 Vict. c. 88, s. 38; or by a certificate of baptism: Cov. 300; Dart, 386. Evidence of identity is not usually required: Cov. 304.

Building Society, establishment of, under the Act of 1836, is proved by a copy of the rules certified by the Registrar of Friendly Societies: see 9 & 10 Vict. c. 27, s. 12; *Williams* v. *Hayward*, 22 Beav. 220.

Trustee, appointment or removal of, is proved by a copy of the resolution of the society, certified by the secretary.

Incorporation of, under the Act of 1874, is proved by the certificate of incorporation: 37 & 38 Vict. c. 42, ss. 9, 20.

Rules of an incorporated society are proved by a printed copy, certified by the secretary (s. 20).

Charity Commissioners' sanction, is proved by an order under the seal of the Board, or a certified copy signed by the secretary: 18 & 19 Vict. c. 124, s. 5.

Company (Joint Stock), incorporation of, under the Act of 1862, is proved by the certificate of incorporation: 25 & 26 Vict. c. 89, s. 18; 63 & 64 Vict. c. 48, s. 1: see 40 & 41 Vict. c. 26, s. 6.

Power of disposition is proved by the registered memorandum and articles of association: see 25 & 26 Vict. c. 89,

ss. 17, 174; or by a certified copy signed by the registrar; see 40 & 41 Vict. c. 26, s. 6. As to execution, see p. 20.

Winding up (compulsory), and appointment of official liquidator, are proved by office copies of the orders of Court: see 25 & 26 Vict. c. 89, ss. 88, 92.

Voluntary winding up, and appointment of liquidators, are proved by minutes (signed by the chairman) of the special or extraordinary resolution of a general meeting: see 25 & 26 Vict. c. 89, ss. 51, 67, 129, 133; the regularity of the proceedings being proved by a copy of the notice summoning the meeting and a copy of the articles: see *Re Sheffield, &c. Co.*, W. N., 1887, 218.

Winding up under supervision, and appointment of liquidators, are proved by minutes (signed by the chairman) of the special or extraordinary resolution for voluntary winding up and appointment of liquidators, and an office copy of the supervision order: see 25 & 26 Vict. c. 89, ss. 147, 150.

Composition, under the Bankruptcy Act, 1869, is proved by office copies of the petition and registered resolution (ss. 107, 127).

Under the Bankruptcy Act, 1883, by an office copy of the instrument containing the terms of the composition, with the Official Receiver's certificate that it has been accepted and approved by the Court (ss. 18, 134).

Under the Bankruptcy Act, 1890, in the same way (s. 3).

Consideration, payment of, is proved by a recital of payment, or an indorsed receipt, or a receipt in the body of the deed: see p. 22.

Copyholds, see **Admittance, Custom, Surrender.**

Court of Chancery, or **Supreme Court**, orders and

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proceedings of, are proved by the originals or office copies: see Dart, 354.

Sale by approbation of the judge is proved by an office copy of the certificate of the result of the sale: see Sug. 116.

Covenants, performance of, in the case of leaseholds, is sufficiently proved by production of the receipt for the last payment due for rent: Conv. Act, 1881, s. 3 (4), (5); see *Re Higgins & Percival*, 57 L. J. Ch. 807; except where the lease is at a peppercorn rent: *Re Moody & Yates*, 30 Ch. D. 344; or where the covenants are shown to have been broken: *Re Highett & Bird*, (1903) 1 Ch. 287. As to evidence of waiver or release, see *Hepworth* v. *Pickles*, (1900) 1 Ch. 108.

Custom of copyholds, seems sufficiently proved by the steward's certificate.

Death is proved by a certificate of death under the seal of the General Register Office: 6 & 7 Will. IV. c. 86, s. 38; see 37 & 38 Vict. c. 88, s. 38; or by a certificate of burial, or by probate of the will of the deceased, or letters of administration to his estate: Cov. 287; Sug. 415, 418; Dart, 386. Evidence of identity is not usually required, unless the name is a common one: Cov. 304.

Deeds are proved by production of the originals: Dart, 348; it is not usual to require the execution of the parties to be verified: Cov. 13; Sug. 418; but see *ante*, pp. 11, 22. As to execution by companies and by attorney, see *ante*, p. 20.

Destruction of a deed seems sufficiently proved by statutory declaration: the contents being proved by examined abstracts; but evidence that it was duly executed and stamped is also necessary: see **Loss.**

Disclaimer is generally proved by deed of disclaimer, but an informal note in writing is sufficient: Cov. 205; *Re Birchall*, 40 Ch. D. 436; except in the case of a married woman: see *ante*, p. 87.

Enfranchisement, see **Award**.

Enrolment in Chancery of a deed is sufficiently proved by the indorsed certificate of enrolment: 12 & 13 Vict. c. 109, s. 18.

Estate duty, under the In. Rev. Act, 1889, payment of, is proved in the same way as the payment of succession duty: see 52 Vict. c. 7, s. 6; see *post*, p. 135.

Estate duty, under the Finance Act, 1894, payment of, is proved by certificate of discharge of the Commissioners of Inland Revenue: 57 & 58 Vict. c. 30, s. 11; or by the receipt of the Inland Revenue Office.

Exchange Order, under Inclosure Acts, is proved by a copy under the seal of the Inclosure Commissioners, Land Commissioners, or Board of Agriculture: 8 & 9 Vict. c. 118, s. 147; S. L. Act, 1882, s. 48; 52 & 53 Vict. c. 30, s. 11.

Executor, appointment of, is proved by the probate of the will or official extract: Sug. 414; Dart, 358; see *Tarn* v. *Com. Bk. of Sydney*, 12 Q. B. D. 294.

Assent of, is generally proved by writing signed by him, or by his concurrence in the legatee's assignment: see pp. 70, 56.

Friendly Society, registration of, under the Act of 1875 or 1896 is proved by the acknowledgment of registry issued by the Registrar of Friendly Societies: 38 & 39 Vict. c. 60, s. 11; 59 & 60 Vict. c. 25, s. 11.

Trustee, appointment or removal of, is proved by a

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copy of the resolution of the society, certified by the secretary: see 38 & 39 Vict. c. 60, s. 14; 59 & 60 Vict. c. 25, s. 25.

Heirship is proved by evidence of the survivorship of the heir, his relationship, and failure of nearer heirs: see p. 58. For evidence of the ancestor's intestacy, see **Intestacy.**

A statutory declaration of a member of the family, accompanied by certificates of marriage, birth, and death, may generally be accepted in support of the pedigree: see Cov. 279; Sug. 420.

In the case of noblemen, the succession to the title may generally be regarded as sufficient evidence of the pedigree, as appearing in Debrett's Peerage: see Cov. 311.

Identity of parcels, if not shown by a comparison of the plans and descriptions in the deeds with the ordnance map or tithe map, may be proved by statutory declarations of old inhabitants: see Sug. 417.

Change of name of a street or of the number of a house in the metropolitan area, by order of the Metropolitan Board of Works or London County Council, may be proved by a certified copy of the order: see 25 & 26 Vict. c. 102, s. 87; 51 & 52 Vict. c. 41, s. 40.

If the identity depends on occupation or seisin, it may be proved by production of leases or tenants' agreements, or by a comparison of the present and past assessments to poor-rate and land-tax: 3 Pres. 33; Cov. 31.

Inclosure, see **Award.**

Insolvency, petition, vesting order, and order of adjudication under the Act of 1838, are proved by office copies: 1 & 2 Vict. c. 110, s. 105.

Petition and final order under the Act of 1842, are proved by office copies; 12 & 13 Vict. c. 106, s. 239.

Assignees, appointment of, under the Act of 1838, is proved by an office copy of the appointment: 1 & 2 Vict. c. 110, s. 46.

Assignees, appointment of, under the Act of 1842, is proved as in bankruptcy, viz. by an office copy of the certificate of appointment: see 5 & 6 Vict. c. 116, s. 11.

Discharge of debtor under the Act of 1838, is proved by an office copy of the order of adjudication or discharge: 1 & 2 Vict. c. 110, ss. 75, 105.

Intestacy seems to be sufficiently proved by the letters of administration to the intestate's estate; but search should be made to see that no will has been proved: Cov. 277; Sug. 414; Dart, 375.

Jointure, cessation of, is proved in the same way as the cessation of an annuity: see **Annuity.**

Land-Tax, redemption of, is proved by the certificate of the Commissioners, with indorsed receipt, or an official extract from the register: Sug. 323; Cov. 270; see Dart, 393.

Lease, under which the property is held, is proved by production of the original: see *Frend* v. *Buckley*, L. R. 5 Q. B. 213.

Leases, to which the property is subject, are sufficiently proved by production of the counterparts: see *Magdalen Hosp.* v. *Knotts*, 8 Ch. D. 709.

Legacy, discharge of, is proved by a release or receipt signed by the legatee: see Cov. 266; and see *post*, p. 146.

Liquidation, under the Bankruptcy Act, 1869, is proved by office copies of the petition and registered resolution: B. Act, 1869, ss. 107, 127.

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Trustee, appointment of, is proved by an office copy of the Registrar's certificate of appointment: ss. 107, 125 (6).

Close of liquidation is proved by an office copy of the resolution of the creditors: ss. 107, 125 (9).

Discharge of debtor is proved by an office copy of the certificate of discharge signed by the Registrar: ss. 107, 125 (10).

Loss of an instrument seems sufficiently proved by a statutory declaration of diligent search having been made for it without success: see *Parr* v. *Lovegrove*, 4 Drew. 181. The contents seem sufficiently proved by recitals or examined abstracts: see *Moulton* v. *Edmonds*, 1 D. F. & J. 246; but evidence that it was duly executed and stamped is also necessary: *Re Halifax Com. Bk. & Wood*, 47 W. R. 194.

Lunacy, orders in, are proved by office copies: 16 & 17 Vict. c. 70, s. 100; 53 Vict. c. 5, s. 144.

Marriage is proved by a certificate of marriage under the seal of the General Register Office: 6 & 7 Will. IV. c. 86, s. 38; or by a certified extract from the parish register: Cov. 283; Dart, 386. Evidence of identity of the parties is not usually required: Cov. 304.

Orders of Court, see **Court.**

Partition Order, under Inclosure Acts, is proved by a copy under the seal of the Inclosure Commissioners, Land Commissioners, or Board of Agriculture: 8 & 9 Vict. c. 118, s. 147; 11 & 12 Vict. c. 99, s. 14; S. L. Act, 1882, s. 48; 52 & 53 Vict. c. 30, s. 11.

Payment into Court, is proved by an office copy of the Paymaster's certificate.

Portions, discharge of, is proved by a release, accompanied by evidence that the releasors are the portionists, and are of age: Cov. 267.

Possessory Title, see p. 160.

Power, see **Appointment, Attorney.**

Railway Company, incorporation of, is proved by a King's printer's copy of the Company's special Act of Parliament: see Sug. 414.

Recited Facts and matters in deeds, instruments, Acts of Parliament, or statutory declarations, 20 years old at the date of the contract, are sufficiently evidenced by the recitals: V. & P. Act, 1874, s. 2; see p. 12.

Registration of an instrument in Middlesex or Yorkshire, is proved by the indorsed certificate of registration: Sug. 415; York Reg. Act, 1884, s. 9; Land Reg. (Middlesex Deeds) Act, 1891, Sched. r. 7.

Rent, payment of, is proved by production of the last receipt: see Conv. Act, 1881, s. 3 (4), (5). Evidence that the person giving the receipt is entitled to the reversion, cannot in general be required: see *Pegler* v. *White*, 12 W. R. 455.

Seisin, see **Identity.**

Succession duty, payment of, is proved by the receipt of the Inland Revenue Office or certificate of payment: 16 & 17 Vict. c. 51, s. 52; 57 & 58 Vict. c. 30, s. 13; *Howe* v. *Lichfield*, L. R. 2 Ch. 155; and see *post*, p. 147.

Surrender of copyholds is proved by a copy of the court roll, signed by the steward: Cov. 156. It is not usual to require the steward's signature to be verified: Sug. 417.

Survivorship of one of several persons, see **Death.**

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Wills are verified by production of the probate or official copy: Sug. 414; Dart, 358. But if neither be in the vendor's possession, the register at Somerset House can be inspected.

An unproved will of a person dying before 1898, if relating only to freeholds or copyholds, seems to be sufficiently verified by production of the original, duly attested, together with letters of administration to the testator's estate, but search should be made to see that no other will has been proved. In cases of death since the 1st of January, 1898, production of the probate should be required: see 60 & 61 Vict. c. 65, s. 1.

Winding up, see **Company.**

CHAPTER VI.

TITLE TO BE SHOWN.

Title to be shown.

It must be considered whether the title shown by the abstract enables the vendor to perform his contract; and any deficiency in this respect should be pointed out in the opinion and requisitions made accordingly: see 3 Pres. 217.

An agreement to make a good title is always implied in the absence of special conditions: Sug. 16; notwithstanding the purchaser's previous knowledge of a defect: see *Re Highett & Bird*, (1903) 1 Ch. 287; unless at the time of the contract the purchaser knew that a good title could not be made: see *Ellis* v. *Rogers*, 29 Ch. D. 661.

An express agreement to make a good title is not affected by the purchaser's previous knowledge of defects: *Re Gloag & Miller*, 23 Ch. D. 320.

The expense of supplying a defect in the title has to be borne by the vendor, in the absence of a stipulation to the contrary: see *Re Moody & Yates*, 30 Ch. D. 344; *Re Thompson & Holt*, 44 Ch. D. 501.

Special conditions.

Any defect in title which is covered by the conditions of sale must be disregarded, as forming no objection: 3 Pres. 221; unless the title is positively bad, in which case, specific performance cannot be enforced against the purchaser, though he may be unable to recover his deposit: *Re Nat. Prov. Bk. of England* v. *Marsh*, (1895) 1 Ch. 190; *Scott* v. *Alvarez*, (1895) 2 Ch. 603; see Webster, 224, 228.

A condition is, however, not binding in equity, unless it clearly states the facts or the nature of the defect: see *St. Saviour's Trustees & Oyler*, 31 Ch. D. 412; and a

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condition merely precluding the purchaser from calling for the title does not prevent him from proving *aliunde* that the title is bad: *Jones* v. *Watts*, 43 Ch. D. 574; see Webster, 208.

A condition requiring the purchaser to assume facts which the vendor cannot prove, is binding, although the defect is not specified: *Re Sandbach & Edmondson*, (1891) 1 Ch. 99; but a condition requiring him to assume what the vendor knows to be false, is not binding in equity: *Re Banister*, 12 Ch. D. 131; see *Best* v. *Hamand*, 12 Ch. D. 1.

A condition requiring objections to be made within a certain time after delivery of the abstract, only applies to matters disclosed by the abstract: *Re Cox & Neve*, (1891) 2 Ch. 109; and does not preclude the purchaser from subsequently raising an objection which goes to the root of the title: *Re Tanqueray-Willaume & Landau*, 20 Ch. D. 465; see Webster, 262; and see *Pryce-Jones* v. *Williams*, (1902) 2 Ch. 517.

Title required.

A title must be shown to every part of the estate: see *Re Arnold*, 14 Ch. D. 270; *Brewer* v. *Brown*, 28 Ch. D. 309; including the minerals: *Bellamy* v. *Debenham*, (1891) 1 Ch. 412; but the want of an easement of light over the adjoining land is not a defect if not mentioned in the contract: *Greenhalgh* v. *Brindley*, (1901) 2 Ch. 324. If the title be substantially good, trivial defects in the evidence may be disregarded: Cov. 170.

The title should be shown for the period named in the contract, or if none is named, for the full period prescribed by law: see *ante*, p. 6.

Short title.

Where there have been frequent changes of ownership by sale, and the possession has been uninterrupted, the presumption is in favour of the title, although not shown for the full period: 1 Pres. 261. But where the estate has remained in the same family for a long time, more than ordinary caution is required: 1 Pres. 262.

Signs of good title.

The following circumstances may be regarded as the signs of a good title (see 3 Pres. 230) :—

(1) Identity of the property purchased with that to which title is shown.

(2) Tenure of the property the same as that contracted for.

(3) Title shown to the legal estate and beneficial ownership.

(4) Freedom from equities and restrictions as to user.

(5) Determination of prior estates, such as :—

i. Estates tail.
ii. Life estates.
iii. Dower.
iv. Curtesy.

(6) No incumbrances, such as :—

i. Mortgages.
ii. Annuities.
iii. Rents.
iv. Debts.
v. Legacies.
vi. Portions.
vii. Terms.
viii. Tenancies.
ix. Succession duty and estate duty.
x. Paving and sewering expenses, private street works and water rates.
xi. Annuity deeds, rent charges, and *lis pendens*.
xii. Writs and orders affecting land, deeds of arrangement and land charges.

(7) Power of disposition unaffected by :—

i. Bankruptcy, liquidation, composition or winding up.
ii. Instruments on local registry or court rolls.
iii. Settlement.
iv. Adverse claims.

(8) Possession of title deeds.

Identity.

The identity of the property purchased with that to

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which title is shown, is as much a matter of title as devolution is: *Brown* v. *Wales*, L. R. 15 Eq. 142; and if upon the face of the abstract the identity is not clear, evidence on the point is necessary: 3 Pres. 33. The ordnance map often clears up doubts in this respect, and should generally be resorted to before procuring other evidence.

Tenure.

If the tenure of the property does not agree with that stated in the contract, it is an objection to title: Sug. 302; Dart, 1086.

Thus, leaseholds or copyholds do not satisfy a contract for the sale of freeholds: Sug. 302; *Hart* v. *Swaine*, 7 Ch. D. 42.

If the contract is silent as to the vendor's interest, the fee simple is deemed to be sold: Sug. 298; unless the purchaser knew that the vendor had only a smaller estate: see Dart, 124.

In the case of leasehold property, merely described as held under a lease, a good title is not made unless the lease is an original lease: Sug. 300; *Re Beyfus & Masters*, 39 Ch. D. 110.

The term and rent mentioned in the lease must agree with the statements in the contract, as a shorter term or higher rent would diminish the value of the property: 2 Pres. 9; *Jones* v. *Rimmer*, 14 Ch. D. 588.

Legal estate.

In the absence of special conditions, the vendor must show a title to the legal estate as well as to the beneficial ownership, free from incumbrances, either in himself or in some person bound to convey at his request: 3 Pres. 401; Sug. 372. But the devolution of the legal estate need not be traced if power to get it in under the Trustee Act be shown: *Camberwell, &c. Soc.* v. *Holloway*, 13 Ch. D. 754; see Sug. 426.

The legal estate is of great importance, as it protects the purchaser from all equities except those of which he

has notice before completion: 3 Pres. 256; see *Bailey* v. *Barnes*, (1894) 1 Ch. 25; *Jared* v. *Clements*, (1903) 1 Ch. 428. But it must be remembered that the purchaser has notice of every deed stated or referred to in the abstract; and notice of a deed is constructive notice of all its contents, except where no access can be had to it, or where there is nothing to show that it affects the property, and the vendor states that it does not affect it: 3 Pres. 229; Sug. 775; *Patman* v. *Harland*, 17 Ch. D. 356; and where only a short title is stipulated for, the purchaser has constructive notice of what would have been disclosed if a 40 years title had been shown: *Re Cox & Neve*, (1891) 2 Ch. 109; notwithstanding the 3rd section of the Conv. Act, 1882: *Gainsborough* v. *Watcombe, &c. Co.*, 54 L. J. Ch. 991; *Re Nisbet & Potts* (1905) 1 Ch. 391. Notice.

An equitable title, without the legal estate, is not considered marketable, as it is exposed to the risk of being defeated by dormant incumbrances or prior equities: 2 Pres. 229; and if the legal estate cannot be got in, the title will not be forced on the purchaser: Sug. 398; *Re Mercer & Moore*, 14 Ch. D. 287. On the other hand, if the vendor cannot pass the beneficial ownership, the fact that he has the legal estate is valueless: 2 Pres. 229; see *Lee* v. *Soames*, 36 W. R. 884. Beneficial ownership.

Accordingly, all persons having any estate or interest (whether legal or equitable) in the property, should join in the conveyance, unless the whole legal and beneficial ownership can be passed without them by the exercise of an overriding power.

If the vendor sells as trustee, he cannot compel the purchaser to accept a title from the tenant for life under the Settled Land Act: *Re Bryant & Barningham*, 44 Ch. D. 218; nor (it seems) from all the beneficiaries: see *Re Head & Macdonald*, 45 Ch. D. 310.

When the title depends on a contingency, it must be shown to have happened: 3 Pres. 285; see Sug. 402. Contingent title.

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So, on a sale by a mortgagee under his power, he must give evidence of the facts entitling him to exercise it: see *Re Edwards & Green*, 58 L. T. 789; unless the purchaser is protected by the terms of the power: see *ante*, p. 99.

The protection given by sect. 21 of the Conv. Act, 1881, after conveyance, does not preclude previous inquiry: *Life Interest, &c. Corp.* v. *Hand in Hand, &c. Society*, (1898) 2 Ch. 230.

It is sufficient if the power is exercisable at the date of completion: *Farrar* v. *Farrars*, 40 Ch. D. 414.

Doubtful title.

A title is in general too doubtful to be forced on a purchaser if it depends on (1) a doubtful question of fact, such as notice of restrictive covenants or other defects: *Nottingham Co.* v. *Butler*, 16 Q. B. D. 778; *Re Handman & Wilcox*, (1902) 1 Ch. 599; or (2) a question of law as to which there are conflicting decisions: *Re Thackwray & Young*, 40 Ch. D. 34; or (3) a difficult question of construction of a badly drawn instrument: see *Alexander* v. *Mills*, L. R. 6 Ch. 132; and see Dart, 1111.

Suspicious circumstances.

If the circumstances attending a transaction suggest doubts as to its validity in equity, inquiries should be made: see *Bailey* v. *Barnes*, (1894) 1 Ch. 25; but if nothing inequitable is discovered, the mere fact of the circumstances appearing suspicious is no objection to the title: *Alexander* v. *Mills*, L. R. 6 Ch. 132.

Defeasible estate.

If the vendor's estate is defeasible by a stranger, the title is bad, unless a release or confirmation can be procured from him: 3 Pres. 284.

Thus, a power of appointment, option of purchase, or right of re-entry, vested in a stranger, must be released, unless void for remoteness: 3 Pres. 286; *Dunn* v. *Flood*, 25 Ch. D. 629: see *Manchester S. C. Co.* v. *Manchester R. Co.*, (1901) 2 Ch. 37.

So, if the vendor holds under a voluntary conveyance

or settlement, it must be ascertained that it has not been defeated by the grantor's bankruptcy (see *ante*, p. 46); and if dated before the 29th of June, 1893, that it has not been defeated by a subsequent conveyance for value: see *Noyes* v. *Paterson*, (1894) 3 Ch. 267; and see *ante*, p. 46.

The title to leaseholds will be bad (1) if the lease is determinable at the option of the lessor: *Weston* v. *Savage*, 10 Ch. D. 736; or (2) if it contains a proviso for re-entry for breach of covenants, and any covenant has been broken and the breach not waived: *Re Highett & Bird*, (1903) 1 Ch. 287; or (3) if other property is included in the lease with a general proviso for re-entry for breach of covenants: Sug. 382; *Sheard* v. *Venables*, 15 W. R. 1166; notwithstanding sect. 14 of the Conv. Act, 1881: *Creswell* v. *Davidson*, 56 L. T. 811; or (4) if the property is subject to an underlease which does not contain similar covenants to those in the head lease: *Darlington* v. *Hamilton*, Kay, 550.

The title to an agreement for a lease is bad if the agreement is voidable: *Brewer* v. *Broadwood*, 22 Ch. D. 105.

If a licensed public house is sold, the vendor must show a valid licence: see *Tadcaster, &c., Co.* v. *Wilson*, (1897) 1 Ch. 705.

Restrictions as to user.

If the user of the property is restricted by covenant, it is an objection to title: *Re Higgins & Hitchman*, 21 Ch. D. 95; which entitles the purchaser to rescission, but not to compensation: *Rudd* v. *Lascelles*, (1900) 1 Ch. 815.

An affirmative covenant to lay out money on freeholds is not binding on assigns (*Haywood* v. *Brunswick, &c., Society*, 8 Q. B. D. 403; *Austerberry* v. *Oldham*, 29 Ch. D. 750), but it may be an objection to title: see *Andrew* v. *Aitken*, 22 Ch. D. 218.

The statutory prohibition against building in the case of a disused burial-ground is an objection to title: *St. Saviour's Trustees & Oyler*, 31 Ch. D. 412; *Re Ponsford & Newport Sch. Bd.*, (1894) 1 Ch. 454; unless removed

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by a sale under the authority of an Act of Parliament: *A.-G.* v. *London Parochial Charities*, (1896) 1 Ch. 541.

In the case of leaseholds, restrictive or onerous covenants of an unusual kind are an objection to title unless the purchaser bought with notice: *Reeve* v. *Berridge*, 20 Q. B. D. 523; *Re Davis & Cavey*, 40 Ch. D. 601; or had a fair opportunity of ascertaining the terms of the lease: *Re White & Smith*, (1896) 1 Ch. 637; *Re Hædicke & Lipski*, (1901) 2 Ch. 666; *Molyneux* v. *Hawtrey*, (1903) 2 K. B. 487. So is a covenant against assignment: *Bishop* v. *Taylor*, 39 W. R. 542; although qualified: *Re Marshall & Salt*, (1900) 2 Ch. 202.

So, easements over the property may render the title bad: Sug. 312; *Heywood* v. *Mallalieu*, 25 Ch. D. 357.

Estate tail.

Where the title depends on an estate tail having determined, evidence of the death and failure of issue of the tenant in tail must be given, and search should be made against him for disentailing deeds: see 3 Pres. 279.

Life estates.

Evidence of the death of life-tenants should be given, or if any are still living, they should join in the conveyance: see 3 Pres. 279.

If any right to dower or curtesy exists, a release of such right will be required to complete the title.

Dower.

Inquiry should be made as to the existence of any right to dower in the following cases:—

(1) Where any legal owner in fee or in tail has or possibly may have been married on or before the 1st of January, 1834:

(2) Where any owner in fee or in tail has died intestate, without having barred dower: see p. 61.

But no dower can be recovered after the widow has been dead six years: 3 & 4 Will. IV. c. 27, s. 41.

Curtesy.

Inquiry should be made as to the existence of any right to curtesy, where any owner in fee or in tail appears to have been a married woman: see p. 93.

In the case of copyholds, the custom as to freebench or

curtesy should be ascertained from the steward of the manor, and inquiry made accordingly: see pp. 62, 93.

Mortgages.

Any existing mortgage or charge on the property should be reconveyed or (preferably) released by the mortgagee joining in the conveyance: see *Gen. Finance, &c. Co.* v. *Liberator, &c. Society*, 10 Ch. D. 20.

The purchaser is in general entitled to have incumbrances discharged out of the purchase-money if sufficient for the purpose: see Dart, 612; *Re Jackson & Oakshott*, 14 Ch. D. 851; and see Conv. Act, 1881, s. 5. But if the incumbrance is considerably larger than the purchase-money, the vendor may be entitled to rescind: see *Re G. N. R. Co. & Sanderson*, 25 Ch. D. 788.

Inquiry should be made whether any power of charging has been exercised: Sug. 416.

Annuities.

Annuities charged on the property should be shown to have ceased, or if subsisting should be released: 3 Pres. 357; unless there is also a general charge of debts: *Page* v. *Adam*, 4 Beav. 269; and see *post*, p. 155.

Arrears of an annuity can only be recovered within six years, unless an acknowledgment in writing has been given: 3 & 4 Will. IV. c. 27, s. 42; see *Cunningham* v. *Foot*, 3 App. Cas. 974; notwithstanding a trust for payment: 37 & 38 Vict. c. 57, s. 10; but as to perpetual annuities, see *Hughes* v. *Coles*, 27 Ch. D. 231.

Rents.

Rents payable out of the property should be released: 3 Pres. 357; Sug. 313; see *Re G. N. R. Co. & Sanderson*, 25 Ch. D. 788.

If leaseholds are sold subject to an apportioned part of a larger rent, the vendor is bound to show that the apportionment has been duly effected: Sug. 383.

Debts.

Debts charged on real estate by deed or will, are regarded as incumbrances when the creditors are specified, and in

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such cases should be released; but apart from the provisions of the Land Transfer Act, 1897 (see *ante*, p. 56), the devisee of an estate subject to a general charge of debts seems able to make a title without the creditors' concurrence: see 3 Pres. 359; *Colyer* v. *Finch*, 5 H. L. C. 905; Dart, 641; unless proceedings to enforce the charge are registered as a *lis pendens*: *Price* v. *Price*, 35 Ch. D. 297.

Where there is no charge of debts, the purchaser from a devisee is not concerned to inquire whether the testator's debts are paid: *Brit. Mut. Invest. Co.* v. *Smart*, L. R. 10 Ch. 567; and this is not altered by the Land Transfer Act, 1897, where the devise is assented to: see *Re Cary & Lott*, (1901) 2 Ch. 463.

The purchaser from a legatee of leaseholds, whose bequest has been assented to, is equally protected: see *Graham* v. *Drummond*, (1896) 1 Ch. 976.

Legacies.

Legacies charged on the estate are incumbrances and should be released: *Re Rebbeck*, 42 W. R. 473: unless there is also a general charge of debts, or the case falls within sect. 14 or sect. 16 of 22 & 23 Vict. c. 35, when a title can be made without the legatees' concurrence: 3 Pres. 361; see *ante*, pp. 104, 110.

Portions.

Portions charged on the estate are incumbrances and should be released: 3 Pres. 363.

Where the portionists are infants, an order discharging the incumbrances under sect. 5 of the Conv. Act, 1881, appears to be necessary: see Sug. 659.

Terms.

Terms of years should be shown to have expired or been determined by surrender, or by becoming satisfied and attendant upon the inheritance under 8 & 9 Vict. c. 112; see Dart, 362; *Lawton* v. *Ford*, L. R. 2 Eq. 97; *Anderson* v. *Pignet*, L. R. 8 Ch. 180.

Leases.

Leases are incumbrances if the vendor has contracted to give vacant possession: 3 Pres. 400; Sug. 304; see *Caballero* v. *Henty*, L. R. 9 Ch. 447.

In the case of ground rents or property sold subject to leases, a longer term or lower rent than that contracted for would diminish the value of the property, and would therefore entitle the purchaser to compensation.

Tenancies.

Inquiry should be made of any occupying tenant as to the nature of his interest, as the purchaser is deemed to have constructive notice of his rights: Sug. 548; Dart, 884: see *Holmes* v. *Powell*, 8 D. M. & G. 572; and notwithstanding the decision in *Hunt* v. *Luck*, (1902) 1 Ch. 428, a prudent purchaser should inquire as to the person to whom the tenant pays his rent.

Succession duty.

Succession duty is, with certain exceptions mentioned below, payable in respect of every succession to a beneficial interest in possession in freeholds, copyholds, or leaseholds, on any death since the 19th of May, 1853, and is a first charge on the interest of the successor: 16 & 17 Vict. c. 51, ss. 2, 10, 14, 21, 42, 54.

The beneficial interest accruing to a joint-tenant by survivorship is chargeable with duty (s. 3); and so is any increase of benefit accruing on the death of an annuitant or reversionary life-tenant, or on the extinction of a terminable charge (s. 5): see *A.-G.* v. *Robertson*, (1893) 1 Q. B. 293; and when a succession is subsequently increased in value by the falling in of any outstanding interest (*e.g.* a beneficial lease), a further duty is payable (s. 20): *Re Kidd & Gibbon*, (1893) 1 Ch. 695.

Additional duty is payable in respect of successions on deaths after the 30th of June, 1888, except in respect of (1) leaseholds passing by will or devolution by law, or on which account duty has been paid under the In. Rev. Act, 1881: 51 Vict. c. 8, ss. 21, 22; or (2) property chargeable with estate duty under the Finance Act, 1894: 57 & 58 Vict. c. 30, s. 1.

Exceptions:—

(1) No duty is payable on any succession of less value

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than £20 before the 1st of June, 1889: 16 & 17 Vict. c. 51, s. 18; *secus* as to such successions since that day: 52 Vict. c. 7, s. 10.

(2) No duty is payable where the whole succession derived from the same predecessor is of less value than £100: 16 & 17 Vict. c. 51, s. 18; 52 Vict. c. 7, s. 10.

(3) Nor where the successor is the husband or wife of the predecessor: 16 & 17 Vict. c. 51, s. 18; 55 Geo. III. c. 184, Sched. pt. III.

(4) The payment of the fixed probate or administration duty of 30*s.* in conformity with sect. 33 of the Customs and Inland Revenue Act, 1881, satisfies any claim to succession duty in respect of leaseholds included in the affidavit: 44 Vict. c. 12, s. 36.

(5) Where the net value of the property belonging to a person dying after the 1st of August, 1894, does not exceed £1,000, and the fixed duty or estate duty has been paid, succession duty is not payable: 57 & 58 Vict. c. 30, s. 16.

(6) The one per cent. duty is not payable in respect of the following property:—

(*a*) Leaseholds included in the affidavit or account on which duty has been paid in conformity with the Customs and Inland Revenue Act, 1881: 44 Vict. c. 12, s. 41; see *Re Haygarth*, 22 Ch. D. 545;

(*b*) Property chargeable with estate duty under the Finance Act, 1894: 57 & 58 Vict. c. 30, s. 1; or

(*c*) Settled property in respect of which estate duty under the Finance Act, 1894, has been paid since the settlement: 57 & 58 Vict. c. 30, s. 5 (2); 61 & 62 Vict. c. 10, s. 13.

(7) The exercise of a power of sale over settled land comprised in a succession frees the land from duty, the charge being transferred to the proceeds: 16 & 17 Vict. c. 51, s. 42; *Dugdale* v. *Meadows*, L. R. 6 Ch. 501.

(8) A sale under an overriding power implied from a charge of debts, defeats the beneficial interest, and

consequently frees the land from duty: see sect. 2; Hanson, 509.

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(9) So does a sale of leaseholds by executors: *Ib.*

(10) A sale by the Court under the Settled Estates Act, 1877, also frees the land from duty: *Re Warner*, 17 Ch. D. 711.

(11) A sale under the Settled Land Act, 1882, seems to have the same effect.

(12) Land sold under a trust for sale is also free from duty, only the beneficial interest in the proceeds being charged: see 16 & 17 Vict. c. 51, ss. 18, 29; 51 Vict. c. 8, s. 21; Lewin, 515.

(13) No succession is created by a conveyance by way of sale: *Fryer* v. *Morland*, 3 Ch. D. 675.

On a sale by life-tenant and remainderman they seem bound to commute the succession duty payable on the life-tenant's death: see Dart, 1233.

On the sale of a reversion or expectancy, the vendor is not bound to discharge the succession duty: *Re Langham*, 39 W. R. 156; see Dart, 1234; *secus* as to duty on a past succession remaining unpaid by reason of a charge or beneficial lease not having determined: *Re Kidd & Gibbon*, (1893) 1 Ch. 695.

When barred.

Succession duty is barred as against a purchaser in the following cases:—

(1) After six years from the payment of the first of the eight half-yearly instalments under the Act of 1853;

(2) After two years from the time for payment of the last instalment, where the successor has elected to pay in moieties under the In. Rev. Act, 1888; or

(3) After twelve years from the happening of the event giving rise to an immediate claim to the duty: 52 Vict. c. 7, s. 12.

But unless the duty is barred by the Act, evidence of payment should be required.

Temporary estate duty.

Temporary estate duty under the In. Rev. Act, 1889, is

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also payable in respect of a succession on a death between the 1st of June, 1889, and the 31st of May, 1896, where the value of the succession by itself, or (if under a will or intestacy) together with any other benefit taken by the successor, exceeds £10,000, and is a first charge on the interest of the successor; but leaseholds on which temporary estate duty has been paid, as personal estate, are not liable to a second duty: 52 Vict. c. 7, ss. 6, 7; and temporary estate duty is not payable where the property is chargeable with estate duty under the Finance Act, 1894: 57 & 58 Vict. c. 30, s. 1.

Temporary estate duty may be barred by lapse of time in the same way as succession duty: 52 Vict. c. 7, s. 12; see *suprà*. But unless time has run, evidence of payment of the duty should be required.

Estate duty.

Estate duty under the Finance Act, 1894, is, with certain exceptions mentioned below, payable in respect of all freehold, copyhold, and leasehold property, passing on any death after the 1st of August, 1894, whether settled or not: 57 & 58 Vict. c. 30, ss. 1, 2, 5, 22; and is a first charge thereon, except as against a purchaser without notice (s. 9).

The property charged includes:—

(1) Property of which the deceased was 'competent to dispose,' either as tenant in fee or in tail, or for a term of years, or as donee of a general power of appointment (ss. 2, 22); including expectancies and property taken by the deceased under sect. 33 of the Wills Act: *Re Scott*, (1901) 1 K. B. 228;

(2) Any beneficial interest accruing or arising at death, either by cesser of a life estate or life annuity, dower or curtesy, or by survivorship, or otherwise (ss. 2, 22);

(3) Property which would be liable to account duty if sect. 38 of the In. Rev. Act, 1881, and sect. 11 of the In. Rev. Act, 1889, extended to real property and were not restricted to voluntary settlements (s. 2); viz. any property

of which the deceased had made a disposition for less than its full value, whether by way of conveyance or declaration of trust, (*a*) within twelve months of his death, or (*b*) at any time previously, if possession and enjoyment were not immediately assumed 'and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise,' and (*c*) property settled by the deceased with a power of revocation: see 44 Vict. c. 12, s. 38; 52 Vict. c. 7, s. 11.

Exceptions:—

(1) Property held by the deceased as trustee only, is not charged (s. 2).

(2) The duty is not a charge on leaseholds passing to the executor as such (s. 9): see *Re Culverhouse*, (1896) 2 Ch. 251; *secus* as to freeholds passing to him as real representative under the Land Transfer Act, 1897: see *Re Palmer*, (1900) W. N. 9.

(3) Property passing by reason only of a purchase for value is not charged (s. 3).

(4) No duty is payable on the cesser of a life annuity or lease for lives, if granted for full value (s. 3).

(5) No duty is payable on the death of any person whose interest fails before it falls into possession, if subsequent limitations under the settlement are subsisting (s. 5): see *A.-G.* v. *Wood*, (1897) 2 Q. B. 102.

(6) Where the settlor, being in possession as life tenant, becomes entitled to the immediate reversion or absolute power of disposition by the death of an intermediate remainderman on or after the 1st of July, 1896, no duty is payable: 59 & 60 Vict. c. 28, s. 14.

(7) Where only a life interest is created in favour of a person, not a former owner, who enters and retains possession to the entire exclusion of the settlor or of any benefit to him, no duty is payable on his death on or after the 1st of July, 1896, by reason of the reverter to the settlor in his lifetime: see 59 & 60 Vict. c. 28, s. 15.

(8) Where husband or wife has, under a disposition

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taking effect before the 2nd of August, 1894, settled income on the other, and after that date becomes entitled thereto by survivorship, no duty is payable (s. 21); *secus* where the survivor becomes absolutely entitled: see *A.-G.* v. *Strange*, (1898) 2 Q. B. 39.

(9) Where a husband is entitled by law to the rents of his wife's property, no duty is payable on his death on or after the 1st of July, 1896, in respect of the interest thus accruing to her: 59 & 60 Vict. c. 28, s. 15.

(10) No duty is payable in respect of a surrendered life interest in the case of death before April, 1900: *A.-G.* v. *Beech*, (1899) A. C. 53; although the surrender be within 12 months of the death: *A.-G.* v. *De Préville*, (1900) 1 Q. B. 223; but in cases of death since the 1st of April, 1900, duty is payable unless the surrender was *bonâ fide* made 12 months before the death, and *bonâ fide* possession and enjoyment was assumed thereunder immediately and thenceforward retained to the entire exclusion of the deceased and of any benefit to him: 63 Vict. c. 7, s. 11.

(11) If life-tenant and remainderman together sell the fee, no estate duty is payable on the life-tenant's death, as the sale prevents the property passing: see *Cowley* v. *I. R. Comrs.*, (1899) A. C. 219.

(12) So, if a life-tenant sells the fee under the powers of the S. L. Acts, no estate duty is payable: see Hanson, 107.

(13) If an interest in expectancy has been sold for full value before the 2nd of August, 1894, no duty is payable when it falls into possession (s. 21).

(14) If estate duty has already been paid on settled property since the settlement, no further duty is payable until the death of a person 'competent to dispose' of it (s. 5): see s. 22; and see 61 & 62 Vict. c. 10, s. 13; *In. Rev. Comrs.* v. *Priestley*, (1901) A. C. 208.

(15) Where the property represents personalty settled by a person dying before the 2nd of August, 1894, on which probate or account duty has been paid, no estate duty is payable until the death of a person 'competent to

dispose' of it: see ss. 21, 22; *A.-G.* v. *Londesborough*, (1905) 1 K. B. 98.

Settlement estate duty.

Settlement estate duty is also payable on settled property chargeable with estate duty, if it passes on the death to some person not 'competent to dispose' of it (ss. 5, 22); although only contingently entitled: see *A.-G.* v. *Clarkson*, (1900) 1 Q. B. 156; and seems to be a charge thereon: see s. 9; and see 59 & 60 Vict. c. 28, s. 19.

But no settlement estate duty is payable in the following cases:—

(1) Where the only subsisting life interest is that of the wife or husband of the deceased (s. 5);

(2) Where settlement estate duty has already been paid since the settlement (s. 5);

(3) Where the land is settled by Act of Parliament or royal grant, so as to be inalienable (s. 5);

(4) Where the property is settled by a disposition taking effect before the 2nd of August, 1894 (s. 21);

(5) Where the net value of the property belonging to the deceased does not exceed £1,000, and the fixed duty or estate duty has been paid (s. 16).

Estate duty, when barred.

Estate duty under the Finance Act, 1894, may be barred by lapse of time in the same way as succession duty (s. 8): see *ante*, p. 149. But unless time has run, evidence of payment of the duty should be required: see p. 131.

Land-tax and tithes.

Land-tax and tithes are not an objection to title, nor is the vendor bound to discharge them: Sug. 322; nor where the land is subject with other persons' property to one entire tithe rent charge, is the vendor bound to procure an apportionment: *Re Ebsworth & Tidy*, 42 Ch. D. 23.

Paving and sewering expenses.

Paving and sewering expenses apportioned by a Vestry, District Board or Borough Council under the Metropolis

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Local Management Acts, although not a charge on the property (*Egg* v. *Blayney*, 21 Q. B. D. 107), are recoverable against successive owners: *Plumstead Bd.* v. *Ingoldby*, L. R. 8 Ex. 63, 174; see *Wix* v. *Rutson*, (1899) 1 Q. B. 474; and seem to be outgoings payable by the vendor if the work is done before the time fixed for completion.

Expenses of paving, sewering and other works, executed by a Local Authority under the Public Health Act, 1875, are a charge on the property as from the completion of the works: *Re Allen & Driscoll*, (1904) 2 Ch. 226; which may be enforced by sale: see *Tendring Union* v. *Dowton*, (1891) 3 Ch. 265; unless barred by lapse of time: see *Hornsey L. Bd.* v. *Monarch, &c. Society*, 24 Q. B. D. 1.

Inquiry as to the existence of any charges of this kind should accordingly be made of the Vestry or Local Authority; see Dart, 1191; as they do not require registration as land charges: see *Reg.* v. *Land Registry*, 24 Q. B. D. 178.

If the work is complete at the date of the contract, the cost is payable by the vendor as an incumbrance: *Re Betteswortb & Richer*, 37 Ch. D. 535; and if the work is complete before the date fixed for completion of the contract, seems to be an outgoing payable by the vendor under the ordinary condition: see *Re Allen & Driscoll*, (1904) 2 Ch. 226.

Private street works.

Expenses of private street works, apportioned by an Urban Authority under the Act of 1892, are a similar charge to paving expenses under the Public Health Acts: 55 & 56 Vict. c. 57, s. 13; *Stock* v. *Meakin*, (1900) 1 Ch. 683; search for which should be made in the register kept by the Urban Authority.

Dangerous structure expenses.

Dangerous structure expenses under the London Building Act, 1894 (see *Tubbs* v. *Wynne*, (1897) 1 Q. B. 74), and the cost of abating nuisances under the Public Health (London) Act, 1891 (see *Barsht* v. *Tagg*, (1900) 1 Ch. 231), are also outgoings within the ordinary condition.

Water rates.

Water rates, when payable by the owner (see 10 & 11

Vict. c. 17, s. 72) are also a charge: 50 & 51 Vict. c. 21, s. 4; and should therefore be ascertained to have been paid: see *E. London W. Works* v. *Kellerman*, (1892) 2 Q. B. 72.

Judgments.

A judgment does not now operate as a charge on land unless or until a writ or order for the purpose of enforcing it is registered under sect. 5 of the Land Charges, &c. Act, 1888: 63 & 64 Vict. c. 26, s. 2.

Writs and orders affecting land are void as against a purchaser, unless registered in pursuance of the Land Charges, &c. Act, 1888; but where the proceeding in which the writ or order was issued or made is registered as a *lis pendens*, the operation of such registration is not affected: 51 & 52 Vict. c. 51, s. 6: 63 & 64 Vict. c. 26, s. 3.

Crown-debts.

Crown-debts do not now operate as a charge on the crown-debtor's land, unless or until registered under sect. 5 of the Land Charges, &c. Act, 1888: 63 & 64 Vict. c. 26, s. 2.

Annuities.

Life annuities and rent charges granted since the 26th of April, 1855 (otherwise than by marriage settlement or will), do not affect a purchaser without notice, unless registered in the Common Pleas Office (now the Central Office): 18 & 19 Vict. c. 15, ss. 12, 14; see *Greaves* v. *Tofield*, 14 Ch. D. 563; and see Dart, 1226.

Lis pendens.

A *lis pendens* does not bind a purchaser without express notice, unless registered or re-registered in the Common Pleas Office (now the Central Office) within five years before completion: 2 & 3 Vict. c. 11, s. 7; see *Price* v. *Price*, 35 Ch. D. 297; and see Dart, 1220.

Deeds of arrangement and land charges.

Deeds of arrangement and land charges required to be registered by the Land Charges, &c. Act, 1888, are avoided as against a purchaser unless so registered: 51 & 52

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Vict. c. 51, ss. 9, 12; see *Reg.* v. *Land Registry*, 24 Q. B. D. 178.

Bankruptcy, &c.

Bankruptcy, liquidation, or composition proceedings against an owner of land may deprive him of all power of disposition: see *ante*, pp. 79, 82, 84; and if the purchaser has notice of an available act of bankruptcy, he cannot safely complete: *Powell* v. *Marshall & Co.*, (1899) 1 Q. B. 710; see *ante*, p. 47.

As to the effect of winding up a company, see *ante*, p. 122.

Searches.

The following searches should accordingly be made against the vendor (unless he is a trustee or mortgagee):—

(1) At the Land Registry Office, for writs and orders, annuities and rent charges, *lis pendens*, and deeds of arrangement, and land charges: an official search can be obtained: see Conv. Act, 1882, s. 2; 51 & 52 Vict. c. 51, s. 17.

(2) At the Bankruptcy Court, for bankruptcy, liquidation, and composition proceedings: see Dart, 1224.

If the vendor did not purchase the property, similar searches should be made against his predecessors in title, back to and including the last purchaser: see Dart, 1218.

The old searches for judgments, crown-debts and executions, are no longer made: see *supra*.

If the vendor has acquired the property within the last twelve years, it is prudent to search in bankruptcy against all persons who have been owners during that period: see *Re New Land, &c. Assocn. & Gray*, (1892) 2 Ch. 138.

In the case of agricultural land, inquiry should be made whether there is any charge for drainage or improvements created before 1889: see 51 & 52 Vict. c. 51, s. 13; and see Elph. & Clark, 109.

Trustee.

If the vendor is a trustee, only the search for *lis pendens* need be made against him: see Dart, 1221; but where the

consent of a life tenant is required, search should also be made against him for *lis pendens*, and creditors' deeds, and in bankruptcy: see Elph. & Clark, 158.

Mortgagee.

If the vendor is a mortgagee, a search for *lis pendens* is generally sufficient: see 18 & 19 Vict. c. 15, s. 11; Elph. & Clark, 160; unless there is reason to suppose that he has become bankrupt, or liquidated or compounded with his creditors, in which case search should also be made against him in bankruptcy.

Life tenant.

In the case of settled land, search should be made against existing and previous life-tenants at the Land Registry Office for land charges: see 51 & 52 Vict. c. 51, s. 10; and where the life-tenant is selling under the Settled Land Acts, the same searches should be made as if he were owner in fee, besides searches against the trustees of the settlement for *lis pendens*: see Elph. & Clark, 157; and inquiry should be made whether any estates, interests, or charges have been conveyed or created for securing money: see *ante*, p. 66.

Tenant in tail.

Where the vendor is tenant in tail, search should also be made against him for enrolled deeds: see Elph. & Clark, 152.

Married woman.

Where the vendor is a married woman, search should also be made against her for acknowledged deeds: see Elph. & Clark, 153.

Company.

Where the vendor is a company, its register of mortgages should be inspected, and search should be made at the office of the Registrar of Joint Stock Companies for mortgages, debentures, and winding-up proceedings: see *ante*, p. 47.

Land registry.

The public index map of registered land and the list of pending applications for registration should be searched at the Land Registry, to see if the property purchased is on the Register; and if this is found to be the case, the title must be treated as a registered title: see Chap. VII.

If the property is within the compulsory area, and not

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on the Register, registration of the purchaser's title will be necessary in order to acquire the legal estate: see Chap. VIII.

Local registry.

In the case of freeholds and leaseholds situate in Middlesex or Yorkshire, a search in the local registry should be made, to see that no registered instruments are omitted from the abstract: Dart, 1223; see Land Reg. (Middlesex Deeds) Act, 1891; York. Reg. Act, 1884.

Deeds and documents disclosed by the register should be inquired for and examined: *Kettlewell* v. *Watson*, 26 Ch. D. 501.

An unregistered incumbrance must not be disregarded, as it may be binding in equity if the purchaser takes with actual notice: Sug. 728; see *Rolland* v. *Hart*, L. R. 6 Ch. 678; York. Reg. Act, 1884, s. 14. So, an unregistered will is binding on a purchaser from the heir with notice: *Re Weir*, 58 L. T. 792; and see *ante*, p. 28.

The Middlesex Act does not extend to the City of London: Sug. 732; nor to registered land: see *ante*, p. 23.

Court rolls.

If the property is copyhold, a search in the court rolls should be made: Dart, 1223. But the local registry need not be searched, as copyholds are excepted from the Registration Acts: Sug. 731; York. Reg. Act, 1884, s. 28.

Settlement.

It is prudent to inquire whether the vendor has executed any settlement: Dart, 367; see *Lloyd's Bank Co.* v. *Jones*, 29 Ch. D. 221; but the vendor is not bound to answer: *Re Ford & Hill*, 10 Ch. D. 365.

A voluntary settlement cannot be disregarded, as before the Act of 1893 it might have been confirmed by a subsequent consideration; Sug. 720; Dart, 928; *Clarke* v. *Willott*, L. R. 7 Ex. 313; and since that Act, it has not been liable to be defeated by a conveyance for value: see *ante*, p. 46.

Adverse claim.

An adverse claim to the estate may be a fatal objection to the title, unless shown to be clearly unfounded: *Re Harris & Rawlings*, W. N. 1894, 19; *Re Heaysman & Tweedy*, 69 L. T. 89; *George* v. *Thomas*, 52 W. R. 416. Inquiry should accordingly be made of the claimant as to his rights: Sug. 7, 395; Dart, 106.

Production.

Production of the abstracted deeds and documents is necessary, not only to verify the abstract, but also to ascertain that they have not been deposited by way of mortgage: see *Oliver* v. *Hinton*, (1899) 2 Ch. 264.

If the deeds are deposited at the vendor's bank, a letter should be required from the bank manager stating that the bank has no charge.

In the case of copyholds, the stamped copies of the court roll are the proper muniments of title, and should therefore be produced: Cov. 158; Sug. 448.

The vendor is bound to produce all the documents of title: Sug. 429; Dart, 481; but the expense of producing such as are not in his possession has to be borne by the purchaser: Conv. Act, 1881, s. 3 (6); *Re Ebsworth & Tidy*, 42 Ch. D. 23; even where the deeds are in the possession of the vendor's mortgagee: *Re Willett & Argenti*, 60 L. T. 735. The vendor must, however, bear the cost of obtaining the title deeds to be handed over on completion: *Re Duthy & Jesson*, (1898) 1 Ch. 419.

Custody of Deeds.

The vendor is entitled to retain deeds relating to any part of the estate retained by him: V. & P. Act, 1874, s. 2; see *Re Williams & Newcastle*, (1897) 2 Ch. 144; but is bound to give a statutory acknowledgment or covenant for their production: see *Re Pursell & Deakin*, (1893) W. N. 152.

The want of a legal covenant for production, however, is not an objection to title if the purchaser will have an equitable right to production: V. & P. Act, 1874, s. 2; see *Fain* v. *Ayers*, 2 Si. & St. 533.

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An equitable right to production seems to exist in every case where the holder of the deeds claims under a person who has given the vendor or any of his predecessors in title a covenant for production: see Sug. 453.

Lost deed.

If any deed is lost, it seems to be no objection, unless its absence throws a reasonable doubt on the title; but clear and cogent evidence of its contents, and execution, and of the loss must be given: see *ante*, p. 134.

No deeds.

The want of title deeds is not necessarily a fatal objection to the title: 1 Pres. 23; see *Bulley* v. *Bulley*, L. R. 9 Ch. 747; but it renders great caution necessary; and evidence of long uninterrupted possession, enjoyment, and dealing with the property should be given to show that there is an absolute title in fee, and the absence of deeds should be accounted for: Sug. 438.

Statutes of Limitations.

A defect in title may be cured by possession under the Statutes of Limitations, 3 & 4 Will. IV. c. 27, and 37 & 38 Vict. c. 57; and a title depending on the Statutes may be forced on a purchaser: Sug. 389; *Games* v. *Bonnor*, 33 W. R. 64. But evidence of the circumstances under which the possession commenced is essential; and as the twelve years' bar only applies against a person entitled in possession, and also *sui juris* when time began to run, evidence on this point is necessary as well as evidence of no acknowledgment having been given to the person barred: see Dart, 471; *Re Alison*, 11 Ch. D. 295; *Young* v. *Harris*, 65 L. T. 45.

Possession by a mortgagee for twelve years, without giving a written acknowledgment of the mortgagor's title or right to redemption, absolutely bars the mortgagor: see *Forster* v. *Patterson*, 17 Ch. D. 132; and possession by a mortgagor for twelve years, without paying any principal or interest or giving any acknowledgment of the mortgagee's title, bars the mortgagee: see *Kibble* v. *Fairthorne*, (1895) 1 Ch. 219.

Where land is in lease, time does not run against the landlord till its expiration: see *Walter* v. *Yalden*, (1902) 2 K. B. 304.

Where the estate is in settlement time does not begin to run against a remainderman until his estate falls into possession; so that a title may be defective even after 30 years' possession: see Sug. 483; *Mills* v. *Capel*, L. R. 20 Eq. 692; and see *Pedder* v. *Hunt*, 18 Q. B. D. 565; *Re Devon*, (1896) 2 Ch. 562.

Although a settlor may have no title, persons entering under the settlement are bound by it, and do not acquire a statutory title against the remaindermen: *Dalton* v. *Fitzgerald*, (1897) 2 Ch. 86.

Time runs against an administrator from the death: *Re Williams*, 34 Ch. D. 558.

Subsequent acknowledgment does not restore a title which has once been barred: *Sanders* v. *Sanders*, 19 Ch. D. 373.

The Statutes run against a constructive trustee, such as a mortgagee who has been paid off without reconveying, so as to get in the legal estate in 13 years: *Sands to Thompson*, 22 Ch. D. 614; and have been held to run against an express trustee where the beneficiary is in possession: see *Re Cussons*, 73 L. J. Ch. 296; *sed qu.*

A title may be acquired under the Statutes against a corporation, a railway company, or a charity, as well as against a private person: see *Mayor of Brighton* v. *Guardians of Brighton*, 5 C. P. D. 368; *Midland R. Co.* v. *Wright*, (1901) 1 Ch. 738; *Magdalen Hospital* v. *Knotts*, 4 App. Cas. 324. But public rights of way are not barred by adverse possession: *Harvey* v. *Truro Dist. Council*, (1903) 2 Ch. 638; nor are restrictive covenants: *Re Nisbet & Potts*, (1905) 1 Ch. 391.

Opinion on title.

The points to be dealt with in the opinion on title may be summed up as follows:—

(1) Any defects in title or evidence of title.

(2) Any incumbrances affecting the property.

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(3) Any doubts arising as to the construction or legal effect of any instrument.

(4) The means by which such defects can be supplied and such doubts removed.

(5) The risk caused by any defect which cannot be remedied, leaving it to the purchaser to decide whether he will waive the objection.

(6) The necessary parties to the conveyance.

(7) The requisitions to be made for completing and verifying the abstract and perfecting the title.

(8) The searches and inquiries to be made: see 1 Pres. 8, 261.

Vendor and purchaser summons.

If any question arises in respect of a requisition or objection to title, or claim for compensation, the decision of a Judge can be obtained by a summons under the V. & P. Act, 1874, s. 9, unless the question is one affecting the existence or validity of the contract: *Ib.*

The vendor's right to rescind may be tried in this way: see *Re Jackson & Woodburn*, 37 Ch. D. 44; and so may questions as to the form of the conveyance: *Re Hughes & Ashley*, (1900) 2 Ch. 595.

The fact of the validity of the contract being disputed does not oust the jurisdiction to decide other questions: *Re Hughes & Ashley*, (1900) 2 Ch. 595.

If a good title according to the contract is not shown, the purchaser may in this way obtain rescission of the contract and recover his deposit with interest and his costs of investigating the title: *Re Hargreaves & Thompson*, 32 Ch. D. 454; even on the vendor's summons: *Re Walker & Oakshott*, (1901) 2 Ch. 383; and if he brings an action instead, the extra costs may be disallowed: see *King* v. *Chamberlayn*, W. N. 1887, 158.

But the deposit cannot be recovered in this way if the defect is covered by the conditions: see *Re Davis & Cavey*, 40 Ch. D. 601; but see *Re Hœdicke & Lipski*, (1901) 2 Ch. 666; and see *ante*, p. 137.

The vendor's failure to show a title does not entitle the purchaser to damages for loss of his bargain: *Bain* v. *Fothergill*, L. R. 7 H. L. 158; unless caused by the vendor's default: *Day* v. *Singleton*, (1899) 2 Ch. 320; and even then such damages cannot be recovered by a vendor and purchaser summons: *Re Wilson & Stevens*, (1894) 3 Ch. 546.

CHAPTER VII.

REGISTERED TITLES.

Registered title.

In considering a registered title, it must be observed whether the land is on the Registry of Title established by the Land Registry Act, 1862, or on that established by the Land Transfer Acts, 1875 and 1897.

The principal provisions of these Acts, so far as they affect purchasers, are as follows :—

Land Registry Act, 1862.

Land Registry Act, 1862.

Under this Act there are three books of registry :— (1) 'The Register of Estates,' containing a description of the property under a distinguishing number with an annexed plan; (2) 'The Record of Title,' showing the existing estates, powers, and interests in the land, and the persons entitled thereto; and (3) 'The Register of Incumbrances,' containing an account of all charges and incumbrances affecting the property: 25 & 26 Vict. c. 53, s. 14.

While land is on the 'Register of Estates with an indefeasible Title,' the persons for the time being named in the 'Record of Title' are, for the purposes of sale and mortgage, deemed to be absolutely entitled to the estates, rights, powers and interests therein expressed (exclusive of mines and minerals), subject to any specified exception, qualification or condition, and to any right or interest thereby reserved, and to any registered incumbrances, and to any liabilities in the nature of land-tax, tithe rent charge, succession duty, crown rents, public rights of way, easements, and occupation leases not exceeding 21 years: 25 & 26 Vict. c. 53, ss. 9, 20, 27; see *Re Richardson*,

L. R. 12 Eq. 398; 13 Eq. 142; *Re Winter*, L. R. 15 Eq. 156.

Registration without an indefeasible title does not prejudice any estate, right or interest created or existing at or before registration (s. 25).

Land certificate.

A land certificate under the seal of the Land Registry Office, and signed by the Registrar, is evidence of the entries in the 'Register of Estates,' the 'Record of Title,' and the 'Register of Incumbrances,' at the date of the certificate, and (if so certified) of the land being registered with an indefeasible title (ss. 68, 69, 71).

Special land certificate.

A special land certificate, obtained for the purpose of sale, is conclusive evidence of the title of the registered proprietor as appearing by the 'Record of Title,' and prevents the registration of any fresh transaction for 14 days from its date, unless delivered up (s. 70).

Transfer.

Land on the Register may be transferred by a statutory disposition, or by indorsement on the land certificate, in the form specified in the schedule to the Act (ss. 63, 65, 72); but any restriction entered in the Register has to be observed (s. 94).

The transfer requires the same stamps as an ordinary conveyance (s. 88).

The transfer is completed by the proper entries being made in the Register (s. 64); and the original transfer is marked so as to give notice of its registration (see s. 75).

Deposit of land certificate.

A deposit of the land certificate has the same effect as a deposit of title deeds of unregistered land (ss. 63, 73).

Unregistered estates.

Land on the Register devolves, and may be dealt with by deed or will in the same way as unregistered land; but no equitable mortgage or lien is created by a deposit of title deeds, and no unregistered estate or interest can prevail against the title of a subsequent purchaser for value duly registered (ss. 33, 63, 74). If a caveat has been lodged, however, it must not be disregarded, as the

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cautioner may, within 21 days after the Registrar's notice, obtain an order protecting his interest (see ss. 98, 99).

Local registries.

The Local Registry Acts in force in 1862 do not apply to land in Middlesex and Yorkshire while on the Register (s. 104).

Removal from Register.

The Land Registry Act, 1862, ceases to apply to land when removed from the Register (s. 34), or registered under the Land Transfer Act, 1875: see 38 & 39 Vict. c. 87, s. 126.

On the registration of an absolute transfer or transmission in fee simple after the 1st of January, 1898, the title is transferred to the Register kept under the Land Transfer Acts, 1875 and 1897: L. T. Rules, 29 December, 1897.

Title to be shown.

It appears to be sufficient for the vendor to show a title in himself on the face of the Register, without deducing or proving it in the usual way: see *Gibbs* v. *Messer*, (1891) A. C. 248.

Abstract.

The abstract should accordingly consist of copies of the subsisting entries in the Register; and should be verified by inspection of the Register. But where the Register merely refers to an instrument for the estates or interests of the parties, an abstract of such instrument should be furnished and verified.

Search.

The Register should be searched for special land certificates, restraints on conveyance, caveats, and notices of unregistered estates.

Production.

The production of the land certificate should also be required, to show that it has not been deposited by way of charge; and the purchaser should require it to be delivered to him on completion with the title deeds.

If the vendor is not registered as proprietor, he should be required to register before completion, unless the land is removed from the Register.

LAND TRANSFER ACTS, 1875 AND 1897.

Land Transfer Acts, 1875 and 1897. Register.

The Register under these Acts consists of (1) The Property Register, containing the description of the land under its distinguishing number, with a reference to the filed plan; (2) The Proprietorship Register, stating the nature of the title (whether absolute, qualified or possessory), and containing the name of the proprietor and cautions, inhibitions and restrictions; and (3) The Charges Register, containing incumbrances, notices of leases, dower and curtesy, notes of adverse rights, and dealings with registered charges: L. T. Rules, 1903, rr. 2, 3, 6, 7.

Index maps of registered property and a List of pending applications for registration are also kept, which are open to public inspection: r. 14.

Transfer.

A registered proprietor of freehold or leasehold land can transfer it to a purchaser in the manner prescribed by the rules made in pursuance of the Acts subject to any restrictions entered in the Register being observed; the transfer being completed by the purchaser being entered on the Register as proprietor: L. T. Act, 1875, ss. 29, 34, 59. Forms of transfer are given in the First Schedule to the L. T. Rules, 1903.

The transfer has to be by deed (r. 107), in the prescribed form, and attested (r. 108). It requires the same stamps as an ordinary conveyance, unless the transaction is already effected by an unregistered conveyance, in which case only the conveyance has to be stamped (r. 123).

Transfer of Freeholds with absolute title.

If the land is freehold, registered with an absolute title, a transfer for value (when registered) passes the fee simple to the purchaser, subject to any registered incumbrances, and to any liabilities in the nature of quit rent, succession duty, estate duty, land-tax, tithe rent charge, easements, rights (created before registration or before 1898) to mines and minerals, rights of sporting and occupation leases not

exceeding 21 years, and other possessory rights: L. T. Act, 1875, ss. 18, 30; L. T. Act, 1897, Sched. I.

Qualified title.

A transfer for value of freehold land registered with a qualified title has the same effect (when registered), subject to any right or interest appearing by the Register to be excepted: L. T. Act, 1875, s. 31.

Possessory title.

A transfer for value of freehold land registered with a possessory title has the same effect (when registered), subject to any right or interest adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of his registration: L. T. Act, 1875, s. 32.

Transfer of Leaseholds, absolute or qualified title.

If the land is leasehold, registered with an absolute or qualified title, a transfer for value (when registered) vests the term in the purchaser, subject to any registered incumbrances, and to any liabilities in the nature of succession duty, estate duty, land-tax, tithe rent charge, easements, rights (created before registration or before 1898) to mines and minerals, rights of sporting, and occupation leases not exceeding 21 years, and other possessory rights, and subject to any estate, right or interest appearing by the Register to be excepted from the effect of registration: L. T. Act, 1875, ss. 18, 35; L. T. Act, 1897, Sched. I.; L. T. R. 1903, r. 140.

Good leasehold title.

A transfer for value of leasehold land registered with a good leasehold title, has the same effect (when registered), subject to any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease (r. 141).

Possessory title.

A transfer for value of leasehold land registered with a possessory title, has the same effect (when registered), subject to any right, or interest adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of his registration (r. 142).

Voluntary transfer.

A voluntary transfer, so far as a purchaser from the

transferee is concerned, has the same effect as a transfer for value; L. T. Act, 1875, ss. 33, 38.

Land certificate.

A land certificate under the Land Registry seal is *primâ facie* evidence of the title being absolute, qualified, or possessory, as mentioned in the certificate, and of the entries in the Register contained therein: L. T. Act, 1875, ss. 10, 80; both in the case of freeholds and leaseholds: L. T. Rules, 1903, r. 65.

The purchaser is entitled to the custody of the land certificate, unless only part of the land comprised therein is sold, in which case he is entitled to have it produced at the Registry to complete his registration, and to have a new certificate issued: L. T. Act, 1897, s. 8; L. T. Act, 1875, s. 29. This applies to leaseholds as well as freeholds; L. T. R. 1903, r. 143.

Registered charges.

A registered charge has to be made in the prescribed form and executed as a deed: see L. T. Act. 1875, s. 22; L. T. R. 1903, r. 158. It does not pass the legal estate without express words of grant: *Capital &c. Bk.* v. *Rhodes*, (1903) 1 Ch. 631. It may be transferred by registered disposition: L. T. Act, 1897, s. 9. Subject to any restrictive entry on the Register, the registered proprietor of a registered charge with a power of sale may, after the appointed time, sell and transfer the land as if he were the registered proprietor thereof: L. T. Act, 1875, s. 27; and such a transfer executed since the 1st of January, 1898, operates as a conveyance in professed exercise of the power of sale conferred by the Conv. Act, 1881: L. T Act, 1897, s. 9.

Where there are several registered charges they rank according to the order in which they are entered on the Register, subject to any entry to the contrary: L. T. Act, 1875, s. 28: see L. T. R. 1903, r. 111.

Certificate of charge.

A certificate of charge under the Land Registry seal is evidence of the contents of the charge: L. T. Act, 1875, s. 80: L. T. R. 1903, r. 259.

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A charge in favour of a building society or friendly society, indorsed with a certificate of registration, has the same effect as a certificate of charge (r. 122); it may be vacated by an instrument of discharge in the prescribed form (r. 167), and has then to be delivered up, cancelled and retained in the Registry (r. 122).

Deposit of land certificate, &c.

The registered proprietor of land or of a charge may (subject to any registered estates, charges or rights) create a lien by deposit of the land certificate or office copy of registered lease, or certificate of charge: L. T. Act, 1897, s. 8 (replacing L. T. Act, 1875, s. 81); and this lien may be protected by giving notice in writing to the Registrar, which operates as a caution: L. T. R. 1903, r. 243.

Who can transfer.

A registered transfer or charge can only be made by the registered proprietor: L. T. Act, 1875, s. 49; except in the case of a transfer or charge made before first registration under L. T. R. 1903, r. 96, or in cases within sect. 9 of the L. T. Act, 1897.

Unregistered dispositions.

But land on the Register can be conveyed and dealt with in the same way as unregistered land: and unregistered estates may be protected by the entry of notices, cautions, inhibitions or other restrictions on the Register: L. T. Act, 1875, ss. 49, 54: see L. T. R. 1903, r. 229; but trusts cannot be so protected: see L. T. Act, 1897, Sched. I. (replacing L. T. Act, 1875, s. 83).

The legal estate may be passed by an unregistered deed, subject to the risk of being defeated by a statutory transfer, against which notice or caution on the Register seems hardly a sufficient protection: see *Capital &c. Bk.* v. *Rhodes*, (1903) 1 Ch. 631.

Devolution.

Land on the Register devolves on death in the same way as unregistered land, but in case of death on or after the 1st of January, 1898, the executor's assent or transfer, or an order of the Court, is required to authorise the

registration of the devisee or heir as proprietor: see L. T. Act, 1897, s. 3: L. T. R. 1903, r. 185.

Adverse possession.

A title adverse to the registered proprietor's title cannot be acquired by any length of possession without an order of Court for rectification of the Register, except in the case of a first proprietor, registered with a possessory title only and out of possession when registered: L. T. Act, 1897, s. 12 (replacing L. T. Act, 1875, s. 21).

Local Registries.

Land on the Register is, after registration, exempt from the jurisdiction of the Middlesex and Yorkshire Registries: L. T. Act. 1875, s. 127; and see 54 & 55 Vict. c. 64, Sched. r. 14. But if removed from the Register, it again becomes subject to the jurisdiction of the local Registry as from the date of removal: L. T. Act, 1897, s. 17.

Evidence of title.

The only evidence of title which a purchaser can require is:—

(1) Inspection of the Register, or of a certified copy or extract.

(2) A statutory declaration as to matters declared not to be incumbrances by sect. 18 of the L. T. Act, 1875, and Sched. 1 of the L. T. Act, 1897.

(3) In the case of an absolute or qualified title, evidence of title to, or discharge of, incumbrances entered on the Register as subsisting at the first registration.

(4) In the case of a qualified title, the same evidence as to any estate, right, or interest excluded from the effect of registration, as if the land were unregistered.

(5) In the case of a possessory title, the same evidence of the title subsisting or capable of arising at the first registration as if the land were unregistered: L. T. Act, 1897, s. 16.

Abstract.

Absolute title.

Accordingly, if the vendor is registered with an absolute title, the abstract should consist of a copy of the land certificate (containing copies of the entries on the Register),

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with a tracing of the plan; and if incumbrances subsisting at first registration are entered on the Register, an abstract of the title thereto should also be furnished: see Brickdale, 32.

Qualified title.

If registered with a qualified title, the abstract, besides containing a copy of the land certificate and tracing of the plan, should also deduce the title in the ordinary way to any estate or right excluded from the effect of registration: see Brickdale, 32.

Possessory title.

If registered with a possessory title, in addition to a copy of the land certificate and tracing of the plan, the abstract should show the same title prior to registration, as if the land were not on the Register: see Brickdale, 32.

Identity.

It must be borne in mind that where there is a conflict between the verbal description of the property and the filed plan, the plan prevails, unless the Registrar otherwise directs: see L. T. R., 1903, r. 282.

Vendor's power of disposition.

As each successive transfer takes place, the change of proprietorship is shown on the face of the land certificate: the names of the former registered proprietors being struck out, and the alterations authenticated by the stamp of the Registry in the margin. But the purchaser is not concerned to inquire into the validity of these transfers; it is enough for him that the vendor is the existing registered proprietor, and, as such, has the statutory power of transfer: see L. T. Act, 1875, ss. 29, 34, 49. For similar reasons, no inquiry need be made as to the validity of transfers of a registered charge which have taken place before the registration of the existing registered proprietor thereof: see L. T. Act, 1875, s. 40; L. T. Act, 1897, s. 9.

Where registered proprietor.

Where not registered.

If the vendor is not registered as proprietor of the land, or of a registered charge with power of sale, he should be required to register before completion, or to procure a transfer from the registered proprietor, which he is bound to do, notwithstanding any stipulation to the contrary: L. T. Act, 1897, s. 16.

Life-tenant.

If a vendor who is registered with a possessory title appears to be only a life tenant, the limited effect of a transfer in such a case (see *ante*, p. 168) seems to render it necessary for him to execute an unregistered conveyance in proper form under the S. L. Act, 1882, as well as the registered transfer; and an unregistered appointment in proper form should be taken where the vendor has only a power of appointment: see Brickdale, 66.

Donee of power.

An unregistered conveyance is believed to be not unfrequently taken with the transfer in other cases; and as the transfer is retained in the Registry, it is thought that this course should always be adopted, unless the vendor's covenants are regarded as of no importance.

Incumbrances.

The registered proprietor of any registered charge should join in the transfer (see L. T. R., 1903, r. 182), or the charge should be discharged as provided by r. 166; and the legal estate, if conveyed by the charge, should be reconveyed: Brickdale, 105.

In either case, the certificate of charge should be delivered up to the Registrar, and the registration cancelled: see L. T. Act, 1897, s. 8; and the deeds should be handed over to the purchaser.

Any unregistered incumbrances should be paid off and discharged in the usual way, and the deeds handed over: see Brickdale, 105.

Death duties.

Succession duty and estate duty do not affect a *bonâ fide* registered purchaser for full value, except in the following cases:—(1) Where noted in the Register; (2) In the case of a possessory title, where subsisting or capable of arising at the original registration; (3) In the case of a qualified title, where included in the exceptions made on the original registration: see L. T. Act, 1897, s. 13; but in all these cases evidence of payment of the duty should be required.

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Production.

Production of the land certificate in the case of freeholds, or, in the case of leaseholds, the land certificate or office copy of the registered lease, should be required to verify the abstract, and to show that it has not been deposited by way of mortgage.

On a sale by the registered proprietor of a registered charge, production of the certificate of charge should be required for a similar reason; but in that case production of the old land certificate seems unnecessary: see L. T. Act, 1897, s. 8.

In either case, production of the title deeds should also be required to show that they have not been deposited by way of mortgage.

Inquiries.

The usual inquiries should be made of the occupying tenants and the local authority: see pp. 147, 154.

Searches.

The Register should be searched to ascertain that the vendor is the registered proprietor, and that there are no incumbrances, cautions, priority notices, inhibitions, restrictions or notices of unregistered estates. If any are found, the vendor should be required to procure their cancellation, removal, or release by the transfer to the purchaser: see Brickdale, 84. An official search can be had: see L. T. R. 1903, r. 289.

If the vendor is selling as the registered proprietor of a registered charge, it should be seen that there is no entry on the Register negativing the implied power of sale; see L. T. Act, 1875, s. 27.

The usual searches for writs and orders, annuities and rent-charges, *lis pendens*, deeds of arrangement and land charges, and in bankruptcy, should also be made: see *ante*, p. 156; unless the vendor is registered with an absolute title: see Brickdale, 80.

Custody of land certificate, &c.

The land certificate should be delivered to the purchaser on completion, unless it includes land retained by the

vendor, in which case it should be required to be deposited at the Registry for completing the purchaser's registration: see *ante*, p. 169.

On a sale by the registered proprietor of a registered charge, the certificate of charge should be delivered to the purchaser to enable him to obtain a land certificate; but the absence of the old land certificate seems immaterial: see L. T. Act, 1897, s. 8.

Title deeds.

The title deeds in the vendor's possession should also be delivered to the purchaser in every case, unless they relate to other property retained by the vendor, in which case the usual statutory acknowledgment and undertaking should be required.

CHAPTER VIII.

COMPULSORY REGISTRATION.

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Compulsory registration.

REGISTRATION of title is compulsory only where an Order in Council has been made declaring it to be so, and then only on sale, and in the district and after the date specified in the Order: L. T. Act, 1897, s. 20.

Freeholds.

Compulsory registration, although by the Act confined to freeholds (s. 20), is extended by the Rules made under

Leaseholds.

the Act to sales of leaseholds having at least 40 years to run or 2 lives to fall in, and to grants of leases (including underleases) of similar duration, executed after the days specified in the Orders: L. T. Rules, 1898, rr. 58, 59; L. T. Rules, 1903, rr. 68, 69; and see r. 66 as to a lease and reversionary lease being treated as one continuous term.

Effect of not registering.

The effect of non-registration is that in the case of freeholds, the legal estate is not acquired under the conveyance (s. 20), while in the case of leaseholds, the assignment or lease operates only as an agreement, and does not pass the legal estate: L. T. R., 1903, r. 69, except, as from the 1st of January, 1904, where the assignees or lessees are trustees for the purposes of the S. L. Acts, and the life-tenant is registered as proprietor within a month: *Ib.*

Exemptions.

The following classes of property are exempt from compulsory registration:— (1) Incorporeal hereditaments; (2) Mines or minerals apart from the surface; (3) Leases having less than 40 years to run or 2 lives to fall in; (4) Undivided shares of land; (5) Freeholds intermixed and indistinguishable from lands of other tenure; (6) Land

parcel of and included in the sale of a manor: L. T. Act, 1897, s. 24; (7) Leaseholds subject to an absolute prohibition against alienation; and (8) Mortgage terms: L. T. Act, 1875, s. 11; L. T. Act, 1897, Sched. I.

County of London.

At present, registration has been made compulsory on sale in the County of London only, *i.e.*, the Metropolis, including the parishes and places mentioned in Schedules A., B. and C. of the Metropolis Management Act, 1855 (see 51 & 52 Vict. c. 41, ss. 40, 100), and certain other districts made part of the County by Orders in Council under the London Government Act, 1899, exclusive of the hamlet of Penge and certain detached parts of parishes which, by virtue of various Orders in Council made under the same Act, have ceased to form part of the County.

Orders in Council.

The Orders in Council by which registration has been made compulsory came into operation in different parts of the County as from different dates; and these dates have to be borne in mind in considering whether the legal estate passes by a conveyance, assignment or lease, executed since the Act of 1897 was passed.

The first Order, dated 18th July, 1898, was postponed and amended by Orders of 20th October, 1898, and 28th November, 1899, its application to the City of London being further postponed by Orders of 9th March, 1901, 10th December, 1901, and 6th March, 1902.

It is perhaps open to question whether the last-mentioned Order was effectual as to the period between the 1st and 6th of March, 1902, or whether the Act applied to the City between those dates.

Commencement of compulsory registration.

The following tables (pages 178 and 179) show the dates at which registration became compulsory in the several parishes and places in the County of London under the above-mentioned Orders.

PARISHES AND PLACES NORTH OF THE THAMES.

Parishes, &c.	Dates.	Parishes, &c.	Dates.
Bethnal Green	1 Mar. 1899	Ratcliffe	1 Mar. 1899
Bow	1 Mar. 1899	Rolls, Liberty of	1 Oct. 1899
Bromley	1 Mar. 1899	St. Botolph without, Aldgate.	1 Oct. 1899
Charterhouse	1 Oct. 1899	St. George's, Hanover Sq.	1 Jan. 1899
Chelsea	1 Oct. 1899	St. George's in the East	1 Mar. 1899
City of London	1 July 1902	St. Giles	1 Oct. 1899
Clerkenwell (*a*)	1 Oct. 1899	St. Luke's	1 Oct. 1899
Fulham	1 Oct. 1899	St. Martin in the Fields	1 Oct. 1899
Furnival's Inn	1 Oct. 1899	St. Marylebone	1 Jan. 1899
Gray's Inn	1 Oct. 1899	St. Pancras	1 Jan. 1899
Hackney	1 Oct. 1899	St. Peter's (close of Coll. Ch.)	1 Oct. 1899
Hammersmith	1 Oct. 1899	Shadwell	1 Mar. 1899
Hampstead	1 Jan. 1899	Shoreditch	1 Mar. 1899
Holborn District	1 Oct. 1899	Spitalfields	1 Oct. 1899
Hornsey, South (*b*)	1 Nov. 1900	Staple Inn	1 Oct. 1899
Islington (St. Mary)	1 Oct. 1899	Stoke Newington (*b*)	1 Oct. 1899
Kensington (St. Mary Abbot)	1 Oct. 1899	Strand District	1 Oct. 1899
Limehouse	1 Mar. 1899	Temple (Inner and Middle)	1 Oct. 1899
Lincoln's Inn	1 Oct. 1899	Tower District	1 Oct. 1899
Mile End, New Town	1 Oct. 1899	Wapping	1 Mar. 1899
Mile End, Old Town	1 Mar. 1899	Westminster	1 Oct. 1899
Minories (Holy Trinity)	1 Oct. 1899	Whitechapel	1 Oct. 1899
Paddington	1 Oct. 1899		
Poplar	1 Mar. 1899		

Clerkenwell. (*a*) The detached part of the parish of St. James and St. John, Clerkenwell, surrounded by the County of Middlesex, ceased to form part of the County of London on the 1st of November, 1900 (the day on which the first election of borough councillors was held): see 62 & 63 Vict. c. 14, s. 18: the London (Clerkenwell Detached) Order in Council, 1900.

S. Hornsey. (*b*) Two detached parts of the parish of South Hornsey, surrounded by the County of London, became part of that County on the 1st of November, 1900 (see 62 & 63 Vict. c. 14, s. 18), and were annexed to the parish of St. Mary, Stoke Newington, on that date, while the whole of the Urban District of South Hornsey became part of the County of London on the same date: see the London (South Hornsey) Order in Council, 1900.

PARISHES AND PLACES SOUTH OF THE THAMES.

Parishes, &c.	Dates.	Parishes, &c.	Dates.
Battersea	1 May 1900	Plumstead	1 Nov. 1900
Bermondsey	1 Jan. 1900	Putney (*d*)	1 May 1900
Camberwell	1 Jan. 1900	Rotherhithe	1 Jan. 1900
Charlton	1 Nov. 1900	Southwark	1 Jan. 1900
Clapham	1 May 1900	Streatham (detached between Lambeth and Camberwell)	1 Jan. 1900
Deptford	1 Nov. 1900		
Eltham	1 Nov. 1900		
Greenwich	1 Nov. 1900		
Horsleydown	1 Jan. 1900	Streatham (remainder)	1 May 1900
Kidbrooke	1 Nov. 1900		
Lambeth	1 Jan. 1900	Tooting Graveney (*e*)	1 May 1900
Lee	1 Nov. 1900		
Lewisham (*c*)	1 Nov. 1900	Wandsworth	1 May 1900
Newington (St. Mary)	1 Jan. 1900	Woolwich	1 Nov. 1900

(*c*) The hamlet of Penge ceased to form part of the County of London, and became part of the County of Kent on the 1st of November, 1900: see the London (Penge) Order in Council, 1900. Penge.

(*d*) The detached part of the parish of Putney, surrounded by the Counties of Surrey and Middlesex, ceased to form part of the County of London, and became part of the County of Surrey on the 1st of November, 1900: see the London (Putney Detached) Order in Council, 1900. Putney.

(*e*) The detached part of the parish of Mitcham, surrounded by the County of London, became part of that County on the 1st of November, 1900 (see 62 & 63 Vict. c. 14, s. 18), and was annexed to the parish of Tooting Graveney on that date: see the London (Mitcham Detached) Order in Council, 1900. Mitcham.

Possessory title: how registered.

Registration with a possessory title, which is all that is required to comply with the Act (s. 20), does not involve any investigation of title by the Registrar: L. T. R., 1903, r. 21.

In the case of freeholds, a written application for registration, in the prescribed form, has to be left at the Registry, with the conveyance and sufficient particulars by plan or otherwise to identify the land (r. 18).

The conveyance after being marked with notice of the registration should be returned to the purchaser (r. 24), who should also obtain a land certificate (r. 22), which

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becomes one of his most important documents of title: see L. T. Act, 1875, s. 10; L. T. Act, 1897, s. 8.

The registration is completed as of the day on which the application is left at the Registry (r. 22), and renders registration of the conveyance in Middlesex unnecessary: 54 & 55 Vict. c. 64, Sched. I., r. 14: see L. T. R. 1903, r. 28.

If the conveyance and a transfer or charge by the purchaser in the prescribed form are left together for registration, the transfer or charge, when completed by registration, has the same effect as if the purchaser was registered (r. 96).

Absolute title: how registered.

If registration with an absolute title is required, the title has to be approved by the Registrar: L. T. Act, 1875, s. 6; L. T. R. 1903, rr. 36, 53.

In the case of freeholds, a written application for registration, in the prescribed form, has to be left at the Registry (r. 30), with an abstract of title and all the purchaser's deeds and documents relating to the title, and a list of tenants (r. 34), all vouched by statutory declaration (r. 47).

The title is then examined by the Registrar (r. 36), advertisements are issued (r. 37), and notices served on tenants (r. 40); and when all objections and requisitions have been disposed of, the registration is completed, and the title deeds (marked with the stamp of the Registry) are returned to the purchaser (r. 44), and the land certificate issued (r. 45).

Qualified title.

If less than an absolute title is shown, the purchaser can only obtain registration of a qualified title (r. 49).

Leaseholds.

In the case of leaseholds, the procedure is substantially the same as in the case of freeholds (r. 50); but the lease or an abstract thereof has also to be left with the application (r. 51).

Absolute title.

If registration with an absolute title is required, the title

both to the leasehold and the freehold and to any intermediate term has to be approved by the Registrar (r. 53.)

Good leasehold title.

If registration with a 'good leasehold title' only is required, the title to the leasehold interest has to be approved by the Registrar (r. 53); and in that case, if the original lessee is registered as first proprietor, no advertisement is necessary (r. 54).

Possessory title.

If registration with a possessory title only is required, there is no investigation of title (r. 21).

Effect of registration of freeholds.

The effect of registration of a person as first registered proprietor of freeholds is as follows:—

Absolute title.

If the registration is with an absolute title, it vests in him an estate in fee simple subject to any incumbrance entered on the Register, and to the liabilities specified in sect. 18 of the L. T. Act, 1875, as amended by Sched. I. of the L. T. Act, 1897, and (if not entitled beneficially) subject to any unregistered estates, rights, interests, or equities of persons claiming under him: L. T. Act, 1875, s. 7.

Qualified title.

Registration with a qualified title has the same effect, except that it does not affect any estate, right or interest appearing by the Register to be excepted, s. 9.

Possessory title.

Registration with a possessory title has the same effect, except that any estate, right or interest then subsisting or capable of arising, adverse to or in derogation of the first registered proprietor's title, is not affected (s. 8), whether appearing in the Register or not: L. T. R. 1903, r. 21.

Effect of registration of leaseholds.

The effect of registration of a person as first registered proprietor of leaseholds is as follows:

Absolute title.

If the registration is with an absolute title, it vests the land in him for the term created by the lease, subject to the rent and covenants, and to any incumbrances entered on the Register, and liabilities specified in sect. 18 of the Act of 1875, as amended by Sched. I. of the L. T. Act, 1897, and (if not entitled beneficially) subject to any unregistered

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estates, rights, interests or equities of persons claiming under him: L. T. Act, 1875, s. 13; L. T. R. 1903, r. 55.

Qualified title.

Registration with a qualified title has the same effect, except that any estate, right or interest appearing by the Register to be excepted is not affected (r. 59).

Possessory title.

Registration with a possessory title has the same effect, except that any estate, right or interest then subsisting or capable of arising, adverse to or in derogation of the first registered proprietor's title, is not affected (r. 57).

Good leasehold title.

Registration with a good leasehold title has the same effect as registration with an absolute title, except that any estate, right or interest, affecting or in derogation of the title of the lessor to grant the lease, is not affected (r. 56).

Evasion of the Act.

The question whether the provisions as to compulsory registration can be safely disregarded, depends on sect. 20 of the L. T. Act, 1897, which enacts that where registration has been made compulsory a person shall not under a 'conveyance on sale' acquire the legal estate in freeholds unless or until registered as proprietor: a 'conveyance on sale' being defined by sect. 20 as 'an instrument executed on sale by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor may be made'; and a similar meaning being given to 'assignment' and 'grant of a lease' in r. 69 of the L. T. Rules, 1903, by r. 70.

The difficulty in the way of any scheme for evading the Act is to find a way of passing the legal estate to the purchaser without making use of an instrument under which an application for registration might be made: and as registration may be applied for by a purchaser, or by a legal or equitable owner, or by a person capable of selling, irrespective in each case of incumbrances (see L. T. Act, 1875, ss. 5, 11), including a trustee, mortgagee, or person having a power of sale (s. 68), this difficulty appears to be considerable.

Risk of not registering.

The risk run by not registering is the liability to be ousted by any person who may acquire the legal estate without notice, or an equitable interest with a better equity.

This risk may be minimised by obtaining possession of the title-deeds and lodging a caution under sect. 60 of the Act of 1875, which would probably be a sufficient protection against subsequent purchasers or mortgagees; but should the vendor happen to be a secret trustee without power of sale, the purchaser would not, without registering, obtain a title free from the equities of the beneficiaries.

APPENDIX.

STAMP DUTIES.

THE principal statutes by which the stamp duties on deeds relating to land have been regulated since 1815 are as follows :—

Stamp Acts.	Deeds charged.
55 Geo. III. c. 184. .	Deeds generally.
3 Geo. IV. c. 117 . .	Transfers and Reconveyances.
4 & 5 Vict. c. 21 . .	Releases.
7 & 8 Vict. c. 76 . .	Deeds of grant.
8 & 9 Vict. c. 106 .	Deeds of grant.
13 & 14 Vict. c. 97 . .	Deeds generally.
16 & 17 Vict. c. 59 . .	Conveyances of equities of redemption and Counterpart Leases.
17 & 18 Vict. c. 83 . .	Leases and Duplicates.
23 & 24 Vict. c. 111 .	Assignments and Surrenders of Leases.
24 & 25 Vict. c. 91 . .	Appointments of new trustees and Counterparts.
28 & 29 Vict. c. 96. .	Conveyances and Transfers.
33 & 34 Vict. c. 97 . .	Deeds generally.
39 & 40 Vict. c. 16. .	Deeds increasing rent.
46 & 47 Vict. c. 55 . .	Mortgages not exceeding £10.
51 Vict. c. 8	Equitable mortgages.
52 & 53 Vict. c. 42 . .	Conveyances of equitable interests.
54 & 55 Vict. c. 39. .	Deeds generally.
58 Vict. c. 16, s. 12 . .	Conveyances by Act of Parliament.
60 & 61 Vict. c. 65, s. 4.	Conveyances to legatees.
61 & 62 Vict. c. 10, s. 6.	Conveyances under Foreclosure Orders.
2 Ed. VII. c. 7, s. 9 .	Transfers on retirement of trustees.
3 Ed. VII. c. 46, s. 7. .	Collateral mortgages.

The dates on which these Acts came into operation are given in the following tables : each Act takes effect from the commencement of the day named (see *Tomlinson* v. *Bullock*, 4 Q. B. D. 232; 52 & 53 Vict. c. 63, s. 36), repealing the duties previously payable in respect of the deeds charged thereby.

Appendix.

Any deed known to be post-dated, should be ascertained to be stamped with the duty payable at the time of its execution: see *Clarke* v. *Roche*, 3 Q. B. D. 170.

An adjudication stamp (denoting that a deed is duly stamped) is conclusive: 54 & 55 Vict. c. 39, s. 12; see *Prudential, &c. Association* v. *Curzon*, 8 Ex. 97.

The progressive duty in force before 1871, only attached where a deed with any schedule, receipt, or other matter indorsed or annexed, contained 2160 words or upwards, but was payable for every entire quantity of 1080 words after the first 1080: 55 Geo. III. c. 184, Sched.; 13 & 14 Vict. c. 97, Sched.; see s. 11. There has been no progressive duty since the 1st of January, 1871.

Deeds relating to several distinct matters are separately charged in respect of each: 33 & 34 Vict. c. 97, s. 8; 54 & 55 Vict. c. 39, s. 4.

Unless a deed is duly stamped, it cannot be given in evidence: 54 & 55 Vict. c. 39, s. 14; and is consequently neither available for defending the title nor for attacking a wrongdoer: see *Whiting to Loomes*, 17 Ch. D. 10.

Where a mortgage is insufficiently stamped, the defect is not cured by a reconveyance, as the title must still be traced through the mortgage: *Ib.*

Statutory declarations since 3rd April, 1860, have been charged with a duty of 2*s.* 6*d.*: see 23 Vict. c. 15; 33 & 34 Vict. c. 97; 54 & 55 Vict. c. 39, Sched.

STAMPS ON APPOINTMENTS.

55 Geo. III. c. 184.

Appointment—from 1st Sept., 1815, to 31st Dec., 1870.	Duty.
Of a new trustee, or of any property under a power.	35*s.*
Progressive duty—up to 10th Oct., 1850. . .	25*s.*
,, ,, —from 11th Oct., 1850 (13 & 14 Vict. c. 97).	10*s.*
And after 6th Aug., 1861, where on the appointment of a new trustee several deeds were executed for vesting the trust property, if one was stamped with 35*s.*, the others were sufficiently stamped as duplicates (*i.e.*, with 5*s.* and progressive duty of 2*s.* 6*d.* and a denoting stamp); 24 & 25 Vict. c. 91, s. 30; see *Foley* v. *I. R. Comrs.*, L. R. 3 Ex. 263.	
Declaration or Revocation of any use or trust of any property by any writing not being a deed or will	35*s.*

33 & 34 Vict. c. 97.

Appointment—from 1st Jan., 1871, to 31st Dec., 1891.	Duty.
Of a new trustee, or of any property under a power .	10*s.*
The conveyance of the estate to the new trustee was also charged with a separate duty of 10*s.*, although contained in the same deed (ss. 8, 78); *Hadgett* v. *I. R. Comrs.*, 3 Ex. D. 46.	
Declaration of any use or trust of any property by any writing not being a deed or will . .	10*s.*
Revocation of any use or trust of any property by deed or by any writing not being a will . .	10*s.*

54 & 55 Vict. c. 39.

Appointment—from 1st Jan., 1892.	Duty.
Of a new trustee, or of any property under a power.	10*s.*
The conveyance of the estate to the new trustee is also charged with a separate duty of 10*s.*, although contained in the same deed (ss. 4, 62); see *Hadgett* v. *I. R. Comrs.*, 3 Ex. D. 46.	
Declaration or Revocation of any use or trust of any property by any writing not being a will . .	10*s.*

Appendix.

Stamps on Conveyances on Sale.

55 Geo. III. c. 184.

Conveyance—from 1st Sept., 1815, to 10th Oct., 1850.	Duty. £	s.	d.
For a consideration not amounting to £20. . .	0	10	0
Amounting to £20 and not amounting to £50 .	1	0	0
,, £50 ,, ,, £150 .	1	10	0
,, £150 ,, ,, £300 .	2	0	0
,, £300 ,, ,, £500 .	3	0	0
,, £500 ,, ,, £750 .	6	0	0
,, £750 ,, ,, £1,000 .	9	0	0
,, £1,000 ,, ,, £2,000 .	12	0	0
,, £2,000 ,, ,, £3,000 .	25	0	0
,, £3,000 ,, ,, £4,000 .	35	0	0
,, £4,000 ,, ,, £5,000 .	45	0	0
,, £5,000 ,, ,, £6,000 .	55	0	0
,, £6,000 ,, ,, £7,000 .	65	0	0
,, £7,000 ,, ,, £8,000 .	75	0	0
,, £8,000 ,, ,, £9,000 .	85	0	0
,, £9,000 ,, ,, £10,000 .	95	0	0
,, £10,000 ,, ,, £12,500 .	110	0	0
,, £12,500 ,, ,, £15,000 .	130	0	0
,, £15,000 ,, ,, £20,000 .	170	0	0
,, £20,000 ,, ,, £30,000 .	240	0	0
,, £30,000 ,, ,, £40,000 .	350	0	0
,, £40,000 ,, ,, £50,000 .	450	0	0
,, £50,000 ,, ,, £60,000 .	550	0	0
,, £60,000 ,, ,, £80,000 .	650	0	0
,, £80,000 ,, ,, £100,000 .	800	0	0
,, £100,000 or upwards	1000	0	0
Progressive duty	1	0	0
Where the conveyance was by lease and release, the lease for a year was also charged,			
If the consideration was under £20 . .	0	10	0
If it amounted to £20 and not to £50 . .	0	15	0
,, £50 ,, £150 . .	1	0	0
,, £150, or upwards . . .	1	15	0
And where the conveyance was by deed of feoffment or bargain and sale enrolled, without a lease and release (55 Geo. III. c. 184), or by release without a lease for a year (4 & 5 Vict. c. 21, s. 1), or by deed of grant (7 & 8 Vict. c. 76, s. 2; 8 & 9 Vict. c. 106, s. 2), it was also charged with the duty payable on a lease for a year; but this further duty did not attach if there were both a feoffment and a bargain and sale enrolled.			
The conveyance of an equity of redemption was charged with duty in respect of the mortgage debt only if the purchaser agreed to pay it; *Chandos* v. *I. R. Comrs.*, 6 Ex. 464; see 16 & 17 Vict. c. 59, s. 10.			

13 & 14 Vict. c. 97.

Conveyance—from 11th Oct., 1850, to 4th July, 1865.	Duty.		
	£	s.	d.
For a consideration not exceeding £25 . .	0	2	6
Exceeding £25 and not exceeding £50 . . .	0	5	0
,, £50 ,, ,, £75 . .	0	7	6
,, £75 ,, ,, £100 . . .	0	10	0
,, £100 ,, ,, £125 . .	0	12	6
,, £125 ,, ,, £150 . . .	0	15	0
,, £150 ,, ,, £175 . .	0	17	6
,, £175 ,, ,, £200 . . .	1	0	0
,, £200 ,, ,, £225 . . .	1	2	6
,, £225 ,, ,, £250 . . .	1	5	0
,, £250 ,, ,, £275 . .	1	7	6
,, £275 ,, ,, £300 . . .	1	10	0
,, £300 ,, ,, £350 . .	1	15	0
,, £350 ,, ,, £400 . . .	2	0	0
,, £400 ,, ,, £450 . .	2	5	0
,, £450 ,, ,, £500 . . .	2	10	0
,, £500 ,, ,, £550 . .	2	15	0
,, £550 ,, ,, £600 . . .	3	0	0
,, £600, then for every £100 and also for any fractional part of £100 . . .	0	10	0
From 5th Aug., 1853, to 10th Oct., 1854, where the consideration was a perpetual annual sum, not exceeding 20*s*.	0	2	6
Exceeding 20*s*. but not exceeding £12, then for every 20*s*. or any fractional part of 20*s*. . .	0	2	6
Exceeding £12 but not exceeding £24, then for every 40*s*. and any fractional part of 40*s*. . .	0	5	0
Exceeding £24, then for every £4 and any fractional part of £4 (16 & 17 Vict. c. 63) . .	0	10	0
But from 11th Oct., 1854, the duty charged in such cases was the same as on a lease for a term exceeding 100 years at a yearly rent equal to the annual sum: 17 & 18 Vict. c. 83; see *post*, p. 198.			
As to conveyances in consideration of redeemable annuities, see 16 & 17 Vict. c. 59, s. 11; and see *Re Gill*, 8 Ex. 876.			
Progressive duty, equal to the *ad valorem* duty if under 10*s*., and in other cases	0	10	0
The conveyance of an equity of redemption was up to 10th Oct., 1853, charged with duty in respect of the mortgage debt, only if the purchaser agreed to pay it: see *Chandos* v. *I. R. Comrs.*, 6 Ex. 464; but, from 11th Oct., 1853, whether agreed to be paid by him or not; 16 & 17 Vict. c. 59, s. 10.			

Appendix.

13 & 14 Vict. c. 97—*continued.*

Conveyance—from 11th Oct., 1850, to 4th July, 1865 (*contd.*)	Duty.
The conveyance by a retiring partner of his interest in the assets to the continuing partners, was chargeable as a conveyance on a sale: *Christie* v. *I. R. Comrs.*, L. R. 2 Ex. 46.	

28 & 29 Vict. c. 96.

Conveyance—from 5th July, 1865, to 31st Dec., 1870.	Duty. £	*s.*	*d.*
For a consideration not exceeding £5	0	0	6
Exceeding £5 and not exceeding £10	0	1	0
,, £10 ,, ,, £15	0	1	6
,, £15 ,, ,, £20	0	2	0
,, £20 ,, ,, £25	0	2	6
,, £25 ,, ,, £50	0	5	0
,, £50 ,, ,, £75	0	7	6
,, £75 ,, ,, £100	0	10	0
,, £100 ,, ,, £125	0	12	6
,, £125 ,, ,, £150	0	15	0
,, £150 ,, ,, £175	0	17	6
,, £175 ,, ,, £200	1	0	0
,, £200 ,, ,, £225	1	2	6
,, £225 ,, ,, £250	1	5	0
,, £250 ,, ,, £275	1	7	6
,, £275 ,, ,, £300	1	10	0
,, £300, then for every £50, and also for any fractional part of £50	0	5	0
A conveyance in consideration of a perpetual annual sum was charged with the same duty as a lease for a term exceeding 100 years at a yearly rent equal to such annual sum: 17 & 18 Vict. c. 88; see *post*, p. 198.			
As to conveyances in consideration of a redeemable annuity, see 16 & 17 Vict. c. 59, s. 11.			
Progressive duty, equal to the *ad valorem* duty if under 10*s.*, and in other cases (see 24 & 25 Vict. c. 91, s. 31)	0	10	0
The conveyance of an equity of redemption was charged with duty in respect of the mortgage debt; 16 & 17 Vict. c. 59, s. 10.			
As to conveyances by retiring partners, see *suprà*.			

Conveyance—from 1st Jan. 1871, to 31st Dec., 1891.	Duty. £	s.	d.
For a consideration not exceeding £5	0	0	6
Exceeding £5 and not exceeding £10	0	1	0
,, £10 ,, ,, £15	0	1	6
,, £15 ,, ,, £20	0	2	0
,, £20 ,, ,, £25	0	2	6
,, £25 ,, ,, £50	0	5	0
,, £50 ,, ,, £75	0	7	6
,, £75 ,, ,, £100	0	10	0
,, £100 ,, ,, £125	0	12	6
,, £125 ,, ,, £150	0	15	0
,, £150 ,, ,, £175	0	17	6
,, £175 ,, ,, £200	1	0	0
,, £200 ,, ,, £225	1	2	6
,, £225 ,, ,, £250	1	5	0
,, £250 ,, ,, £275	1	7	6
,, £275 ,, ,, £300	1	10	0
,, £300, for every £50 and also for any fractional part of £50	0	5	0
Where the consideration consisted of money payable periodically it was charged with duty as follows: (1) If payable for a definite period, on the total amount to be paid: (2) If payable in perpetuity, on the amount payable during the first 20 years: (3) If payable for life, on the amount payable during the first 12 years (s. 72).			
The conveyance of an equity of redemption was charged with duty in respect of the mortgage-debt (s. 73).			
A contract for sale was not chargeable as a conveyance before 31st May, 1889; see *In. Rev. Comrs.* v. *Angus*, 23 Q. B. D. 579; but from that date a contract for sale of an equitable interest was charged with the same *ad valorem* duty as a conveyance; and where that duty was paid the conveyance was not chargeable with any duty, but had to be stamped either with the *ad valorem* duty or with a denoting stamp showing that the duty had been paid: 52 & 53 Vict. c. 42, s. 15 (substituted for s. 18 of 52 Vict. c. 7, as from the passing of that Act).			
As to conveyances by retiring partners, see last page.			
A conveyance by partners to a company in consideration of all the shares being allotted to themselves, is chargeable with *ad valorem* duty: *Foster* v. *I. R. Comrs.* (1894) 1 Q. B. 516.			
As to conveyances to railway companies, see *In. Rev. Comrs.* v. *Glasgow, &c. R. Co.*, 12 App. Cas. 315.			

Appendix.

54 & 55 Vict. c. 39.

Conveyance—from 1st Jan., 1892.	Duty. £	s.	d.
For a consideration not exceeding £5 . . .	0	0	6
Exceeding £5 and not exceeding £10 . . .	0	1	0
,, £10 ,, ,, £15 . . .	0	1	6
,, £15 ,, ,, £20 . . .	0	2	0
,, £20 ,, ,, £25 . . .	0	2	6
,, £25 ,, ,, £50 . . .	0	5	0
,, £50 ,, ,, £75 . . .	0	7	6
,, £75 ,, ,, £100 . . .	0	10	0
,, £100 ,, ,, £125 . . .	0	12	6
,, £125 ,, ,, £150 . . .	0	15	0
,, £150 ,, ,, £175 . . .	0	17	6
,, £175 ,, ,, £200 . . .	1	0	0
,, £200 ,, ,, £225 . . .	1	2	6
,, £225 ,, ,, £250 . . .	1	5	0
,, £250 ,, ,, £275 . . .	1	7	6
,, £275 ,, ,, £300 . . .	1	10	0
,, £300, for every £50 and also for any fractional part of £50	0	5	0
A declaration of trust may be chargeable as a conveyance: see s. 54: *Chesterfield Brew. Co.* v. *I. R. Comrs.*, (1899) 2 Q. B. 7.			
Where the consideration consists of stock or marketable security, duty is charged on its value (s. 55); see *Coats* v. *I. R. Comrs.*, (1897) 2 Q. B. 423.			
Where the consideration consists of money payable periodically, it is charged with duty as follows:—			
(1) If payable for a definite period not exceeding 20 years, on the total amount to be paid:			
(2) If payable for a definite period exceeding 20 years, or in perpetuity, on the amount payable during the first 20 years:			
(3) If payable for life, on the amount payable during the first 12 years (s. 56). This section applies although the money be only contingently payable: *Underground, &c. Ry. Co.* v. *I. R. Comrs.*, (1905) 1 K. B. 174.			
The conveyance of an equity of redemption is charged with duty in respect of the mortgage-debt (s. 57).			

54 & 55 Vict. c. 39—*continued.*

Conveyance—from 1st Jan., 1892—*continued.*	Duty.
A conveyance by a mortgagor to an equitable mortgagee under a foreclosure order, has been held to be chargeable with duty in respect of the mortgage debt: *Huntington* v. *I. R. Comrs.*, (1896) 1 Q. B. 422; but a conveyance following upon a duly stamped foreclosure order is exempt from *ad valorem* duty: 61 & 62 Vict. c. 10, s. 6. As to foreclosure orders, see p. 41.	
A contract for sale of an equitable interest is charged with the same *ad valorem* duty as a conveyance; and where this duty is paid the conveyance is not chargeable with any duty, but has to be stamped either with the *ad valorem* duty, or with a denoting stamp showing that the duty has been paid (s. 59): see *W. Lond. Synd.* v. *I. R. Comrs.*, (1898), 2 Q. B. 507.	
As to conveyances by retiring partners, see *Garnett* v. *I. R. Comrs.*, 48 W. R. 303, and see *ante*, p. 190.	
As to conveyances by partners to a company consisting only of themselves, see *ante*, p. 191.	
As to conveyances to railway companies, see *ante*, p. 191.	
A conveyance by executors to a legatee in satisfaction of his legacy or share of residue under the power of appropriation conferred by the L. T. Act, 1897, seems not liable to *ad valorem* duty; see 60 & 61 Vict. c. 65, s. 4.	
As to deeds of family arrangement, see *Bristol* v. *I. R. Comrs.*, (1901) 2 K. B. 336.	
An assignment of leaseholds is not charged in respect of apportioned rent: *Swayne* v. *I. R. Comrs.*, (1900) 1 Q. B. 172.	
No further duty is payable in respect of an improvement or any covenant relating to the property: 63 Vict. c. 7, s. 10.	
As to conveyances since 30th May, 1895, of property purchased under statutory authority, see 58 Vict. c. 16, s. 12: *Eastbourne* v. *A.-G.*, (1904) A. C. 155.	

Stamps on Deeds not otherwise charged.

55 Geo. III. c. 184.

Deed not otherwise charged—from 1st Sept., 1815, to 31st Dec., 1870.	Duty.
Irrespective of the consideration	35*s.*
Progressive duty—up to 10th Oct., 1850 . . .	25*s.*
,, ,, —from 11th Oct., 1850 (13 & 14 Vict. c. 97)	10*s.*

33 & 34 Vict. c. 97.

Deed not otherwise charged—from 1st Jan., 1871, to 31st Dec., 1891.	Duty.
Irrespective of the consideration (see s. 4) . .	10*s.*

54 & 55 Vict. c. 39.

Deed not otherwise charged—from 1st Jan., 1892.	Duty.
Irrespective of the consideration (see s. 120) . .	10*s.*

STAMPS ON EXCHANGE DEEDS.

55 Geo. III. c. 184.

Exchange—from 1st Sept., 1815, to 31st Dec., 1870.	Duty.
(1) If no money or less than £300 was paid or agreed to be paid for equality . .	35*s.*
(2) If £300 or upwards were paid or agreed to be paid for equality	Same as a conveyance on sale for an equal sum.
Progressive duty—up to 10th Oct., 1850:	
If the deed was liable to the 35*s.* duty . .	25*s.*
If liable to a higher duty	20*s.*
Progressive duty—from 11th Oct., 1850 (13 & 14 Vict. c. 97)	10*s.*
Duplicate—up to 10th Oct., 1850 . . .	Same as original.
,, —from 11th Oct., 1850 (13 & 14 Vict. c. 97)	5*s.*, & progressive duty of 2*s.* 6*d.* & denoting stamp.

33 & 34 Vict. c. 97.

Exchange—from 1st Jan., 1871, to 31st Dec., 1891.	Duty.
(1) Where more than £100 was paid or agreed to be paid for equality (s. 94) . . .	Same as a conveyance on sale for such sum.
(2) In any other case	10*s.*
Duplicate (see s. 93)	5*s.* and denoting stamp.

54 & 55 Vict. c. 39.

Exchange—from 1st Jan., 1892.	Duty.
(1) Where more than £100 is paid or agreed to be paid for equality (s. 73) . . .	Same as a conveyance on sale for such sum.
(2) In any other case	10*s.*
Duplicate (see s. 72)	5*s.* and denoting stamp.
As to conveyance in exchange for shares, see *Coats* v. *I. R. Comrs.*, (1897) 2 Q. B. 423.	

STAMPS ON LEASES.

55 Geo. III. c. 184.

Lease—from 1st Sept., 1815, to 10th Oct., 1850.	Duty.
(1) If for a fine, with no rent or with any yearly rent under £20	Same as a conveyance on sale for same sum.
(2) If no fine but a yearly rent not amounting to £20	£ s. d. 1 0 0
Amounting to £20 and not amounting to £100	1 10 0
,, £100 ,, ,, £200	2 0 0
,, £200 ,, ,, £400	3 0 0
,, £400 ,, ,, £600	4 0 0
,, £600 ,, ,, £800	5 0 0
,, £800 ,, ,, £1,000	6 0 0
,, £1,000 or upwards . . .	10 0 0
(3) If for a fine and also a yearly rent of £20 or upwards	Both duties payable in respect of fine and rent.
(4) If of any other kind. . . .	35*s.*
Progressive duty	20*s.*
Counterpart of a Lease charged with a duty not exceeding £1	Same as the lease (including progressive duty).
Counterpart of any other lease . . .	30*s.*, & progressive duty.
Leases made before 20th March, 1850, were exempt from duty in respect of money paid by the lessee to any other person than the lessor: see 13 & 14 Vict. c. 97, s. 10.	

13 & 14 Vict. c. 97.

Lease from 11th Oct., 1850, to 31st Dec., 1870 (subject to alterations of 17 & 18 Vict. c. 83).	Duty.
(1) If for a fine, with no rent or with any yearly rent under £20	Same as a conveyance on sale for same sum.
(2) If no fine, but a yearly rent not exceeding £5	£ s. d. 0 0 6
Exceeding £5 and not exceeding £10 .	0 1 0
,, £10 ,, ,, £15 .	0 1 6
,, £15 ,, ,, £20 .	0 2 0
,, £20 ,, ,, £25 .	0 2 6
,, £25 ,, ,, £50 .	0 5 0
,, £50 ,, ,, £75 .	0 7 6
,, £75 ,, ,, £100 .	0 10 0
,, £100, then for every £50 and also for any fractional part of £50	0 5 0
(3) If for a fine, and also a yearly rent of £20 or upwards	Both duties payable in respect of fine and rent.
(4) If of any kind not otherwise charged .	35*s.*
Ad valorem duty was also charged on any purchase-money paid by the lessee to another person for his right to the lease.	
No duty was charged in respect of a penal rent, or the surrender of an existing lease.	
Progressive duty, equal to the *ad valorem* duty if under 10*s.*, and in other cases .	10*s.*
Counterpart of a Lease charged with *ad valorem* duty not amounting to 5*s.* .	Same as the lease (including progressive duty).
Counterpart of a Lease charged with *ad valorem* duty amounting to 5*s.* or upwards	5*s.*, & progressive duty of 2*s.* 6*d.*
A denoting stamp was also required in the latter case, except as to counterparts after 11th Oct., 1853, not executed or signed by or on behalf of any lessor or grantor: see 16 & 17 Vict. c. 59, s. 12.	

17 & 18 Vict. c. 88.

Lease for more than 35 years—from 11th Oct., 1854, to 31st Dec., 1870.	Duty.	
	Term not exceeding 100 years.	Term exceeding 100 years.
	£ s. d.	£ s. d.
In respect of a yearly rent not exceeding £5	0 8 0	0 6 0
Exceeding £5 and not exceeding £10	0 6 0	0 12 0
,, £10 ,, ,, £15	0 9 0	0 18 0
,, £15 ,, ,, £20	0 12 0	1 4 0
,, £20 ,, ,, £25	0 15 0	1 10 0
,, £25 ,, ,, £50	1 10 0	3 0 0
,, £50 ,, ,, £75	2 5 0	4 10 0
,, £75 ,, ,, £100	3 0 0	6 0 0
,, £100, then for every £50, and also for every fractional part of £50	1 10 0	3 0 0
In respect of a fine, forming part of the consideration, in addition to a yearly rent	Same as a conveyance for same sum, under 13 & 14 Vict. c. 97.	
Progressive duty, equal to the *ad valorem* duty, if under 10*s.* and in other cases (see 13 & 14 Vict. c. 97)	10*s.*	
Counterparts were charged with the duties imposed by 13 & 14 Vict. c. 97: see last page.		
Leases did not come within this Act, unless a rent was payable for a term exceeding 35 years. *Pearson* v. *I. R. Comrs.*, L. R. 3 Ex. 242.		
No further duty was payable in respect of a covenant to improve the property, or an improvement, or any usual covenant: see 33 & 34 Vict. c. 44.		

Lease—from 1st Jan., 1871, to 31st Dec., 1891.	Duty.
(1) For any definite term less than a year :—	£ s. d.
(*a*) Of a house at a rent not exceeding £10 per annum	0 0 1
(*b*) Of any furnished house at a rent for such term exceeding £25	0 2 6
(*c*) Of any lands otherwise than as aforesaid .	Same as a lease for a year, at same rent.
(2) For any other term :— In respect of a money consideration . .	Same as a conveyance on sale for same sum.

	Term not exceeding 35 years, or indefinite (*v. i.*)			Term exceeding 35, but not exceeding 100 years.			Term exceeding 100 years.		
In respect of rent :—	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Not exceeding £5 per annum . .	0	0	6	0	3	0	0	6	0
Exceeding £5 and not exceeding £10 .	0	1	0	0	6	0	0	12	0
,, £10 ,, ,, £15 .	0	1	6	0	9	0	0	18	0
,, £15 ,, ,, £20 .	0	2	0	0	12	0	1	4	0
,, £20 ,, ,, £25 .	0	2	6	0	15	0	1	10	0
,, £25 ,, ,, £50 .	0	5	0	1	10	0	3	0	0
,, £50 ,, ,, £75 .	0	7	6	2	5	0	4	10	0
,, £75 ,, ,, £100 .	0	10	0	3	0	0	6	0	0
,, £100, for every £50, and also for any fractional part of £50 . .	0	5	0	1	10	0	3	0	0

(3) Of any other kind	10*s.*
An agreement for a lease not exceeding 35 years was charged as an actual lease; but a lease carrying out such an agreement duly stamped, was charged with the duty of 6*d.* only (s. 96).	
No duty was payable in respect of a penal rent, or the surrender of an existing lease, or an improvement or any covenant relating to the property (s. 98).	
Counterpart lease : same duty as the lease if less than 5*s.*, and in any other case . . .	5*s.*
The counterpart (unless stamped as the lease) also required a denoting stamp if executed by or on behalf of any lessor or grantor (s. 93).	
Instruments increasing rent were charged as leases at the additional rent: see 39 & 40 Vict. c. 16, s. 11.	

Lease—from 1st Jan., 1892.	Duty.
(1) For any definite term not exceeding a year :— Of a house at a rent not exceeding £10 per annum	£ s. d. 0 0 1
(2) For any definite term less than a year :— (*a*) Of a furnished house where the rent for such term exceeds £25	0 2 6
(*b*) Of any lands otherwise than as aforesaid	Same as a lease for a year, at same rent.
(3) For any other term :— In respect of a money consideration	Same as a conveyance on sale for same sum.

In respect of rent :—	Term not exceeding 35 years, or indefinite (v. i.)			Term exceeding 35, but not exceeding 100 years.			Term exceeding 100 years.		
	£	s.	d.	£	s.	d.	£	s.	d.
Not exceeding £5 per annum	0	0	6	0	3	0	0	6	0
Exceeding £5 and not exceeding £10	0	1	0	0	6	0	0	12	0
,, £10 ,, ,, £15	0	1	6	0	9	0	0	18	0
,, £15 ,, ,, £20	0	2	0	0	12	0	1	4	0
,, £20 ,, ,, £25	0	2	6	0	15	0	1	10	0
,, £25 ,, ,, £50	0	5	0	1	10	0	3	0	0
,, £50 ,, ,, £75	0	7	6	2	5	0	4	10	0
,, £75 ,, ,, £100	0	10	0	3	0	0	6	0	0
,, £100, for every £50, and also for any fractional part of £50	0	5	0	1	10	0	3	0	0

(4) Of any other kind	10*s.*
An agreement for a lease not exceeding 35 years or for any indefinite term, is charged as an actual lease; but a lease carrying out such an agreement duly stamped, is charged with the duty of 6*d.* only (s. 75).	
No duty is payable in respect of a penal rent, or the surrender of an existing lease, or an improvement or any covenant relating to the property (s. 77) : see *British Electr., &c. Co.* v. *I. R. Comrs.*, (1902) 1 K. B. 441.	
Counterpart lease : same duty as the lease if less than 5*s.*, and in any other case	5*s.*
The counterpart (unless stamped as the lease) also requires a denoting stamp if executed by or on behalf of any lessor or grantor (s. 72).	
Instruments increasing rent are charged as leases at the additional rent (s. 77).	

STAMPS ON ASSIGNMENTS AND SURRENDERS. Appendix.

55 Geo. III. c. 184.

Assignment or Surrender—from 1st Sept., 1815, to 10th Oct., 1850.	Duty.
Of any term of years, except on sale or mortgage .	35*s.*
Progressive duty	25*s.*

13 & 14 Vict. c. 97.

Assignment or Surrender—from 11th Oct., 1850, to 31st Dec., 1870 (subject to alterations of 23 & 24 Vict. c. 111).	Duty.
Of any lease, except on sale or mortgage .	Same as a similar lease, but not exceeding 35*s.*
Progressive duty, equal to the *ad valorem* duty if under 10*s.*, and in other cases .	10*s.*

23 & 24 Vict. c. 111.

Assignment or Surrender—from 29th Aug., 1860, to 31st Dec., 1870.	Duty.
Of a lease for more than 35 years, except on sale or mortgage	Same as a similar lease, but not exceeding 35*s.*
Progressive duty, equal to the *ad valorem* duty if under 10*s.*, and in other cases (see 24 & 25 Vict. c. 91, s. 31) . .	10*s.*

33 & 34 Vict. c. 97.

Assignment or Surrender—from 1st Jan., 1871, to 31st Dec., 1891.	Duty.
If not chargeable as a conveyance on sale or mortgage	10*s.*

54 & 55 Vict. c. 89.

Assignment or Surrender—from 1st Jan., 1892.	Duty.
If not chargeable as a conveyance on sale or mortgage	10*s.*

STAMPS ON MORTGAGES.

55 Geo. III. c. 184.

Mortgage—from 1st Sept., 1815, to 10th Oct., 1850.	Duty. £	*s.*	*d.*
(1) For a definite sum, or for future advances with a limit:			
Not exceeding £50	1	0	0
Exceeding £50 and not exceeding £100 . . .	1	10	0
,, £100 ,, ,, £200 . .	2	0	0
,, £200 ,, ,, £300 . . .	3	0	0
,, £300 ,, ,, £500 . .	4	0	0
,, £500 ,, ,, £1,000 . . .	5	0	0
,, £1,000 ,, ,, £2,000 . .	6	0	0
,, £2,000 ,, ,, £3,000 . . .	7	0	0
,, £3,000 ,, ,, £4,000 . .	8	0	0
,, £4,000 ,, ,, £5,000 . . .	9	0	0
,, £5,000 ,, ,, £10,000 . .	12	0	0
,, £10,000 ,, ,, £15,000 . . .	15	0	0
,, £15,000 ,, ,, £20,000 . .	20	0	0
,, £20,000	25	0	0
(2) for future advances of an uncertain amount and without any limit	25	0	0
Progressive duty	1	0	0

55 Geo. III. c. 184—*continued.*

Mortgage—from 1st Sept., 1815, to 10th Oct., 1850—*contd.*	Duty.
	£ s. d.
If the mortgage was by lease and release, the lease for a year was also charged,	
Where the consideration was under £20 .	0 10 0
Where it amounted to £20 but not to £50 .	0 15 0
,, ,, £50 ,, £150 .	1 0 0
,, ,, £150 or upwards . .	1 15 0
And if the mortgage was by release alone (4 & 5 Vict. c. 21, s. 1), or by deed of grant (7 & 8 Vict. c. 76, s. 2; 8 & 9 Vict. c. 106, s. 2), it was also charged with the duty payable on a lease for a year.	
An additional security by the same mortgagor, or further assurance (where the mortgage was duly stamped) was exempt from *ad valorem* duty, but seems to have required a 35*s.* deed stamp.	
As to mortgages to Building Societies, see p. 119.	

18 & 14 Vict. c. 97.

Mortgage—from 11th Oct., 1850, to 31st Dec., 1870.	Duty.
	£ s. d.
(1) For a definite sum, or for future advances with a limit:	
Not exceeding £50	0 1 3
Exceeding £50 and not exceeding £100 . .	0 2 6
,, £100 ,, ,, £150 .	0 3 9
,, £150 ,, ,, £200 . .	0 5 0
,, £200 ,, ,, £250 .	0 6 3
,, £250 ,, ,, £300 . .	0 7 6
,, £300, then for every £100 and also for any fractional part of £100 .	0 2 6
(2) If for future advances of an uncertain amount and without any limit, the security was made available only for the amount covered by the stamp.	
(3) An additional security or further assurance was charged with the same duty as the mortgage where the amount secured did not exceed £1,400, and in any other case (if mortgage duly stamped)	1 15 0
Progressive duty, equal to the *ad valorem* duty if under 10*s.* and in other cases	0 10 0
As to mortgages to Building Societies, see p. 119.	

Appendix.

33 & 34 Vict. c. 97.

Mortgage—from 1st Jan., 1871, to 31st Dec., 1891 (subject to alterations of 46 & 47 Vict. c. 55, and 51 Vict. c. 8).	Duty. £	s.	d.
(1) For a definite sum or for future advances with a limit (see s. 107):			
Not exceeding £25	0	0	8
Exceeding £25 and not exceeding £50 . .	0	1	3
,, £50 ,, ,, £100 . .	0	2	6
,, £100 ,, ,, £150 . .	0	3	9
,, £150 ,, ,, £200 . .	0	5	0
,, £200 ,, ,, £250 . .	0	6	3
,, £250 ,, ,, £300 . .	0	7	6
,, £300, for every £100 and also for any fractional part of £100 . .	0	2	6
(2) If for future advances of an unlimited amount, the security was made available only for the amount covered by the stamp (s. 107).			
(3) Being a collateral or substituted security, or further assurance (where the primary security was duly stamped): For every £100 and also for any fractional part of £100 of the amount secured . . .	0	0	6
A stock mortgage was charged on the value of the stock (s. 106).			
A further charge was not charged with duty by reason of any further security for the money previously secured (s. 109).			
As to mortgages to Building Societies, see p. 119.			
Debentures were charged with the 2*s.* 6*d. ad valorem* duty; but debentures to bearer after 6th Aug., 1885, were charged with 1*s.* for every £10, and also for any fractional part of £10 secured: see 48 & 49 Vict. c. 51, s. 21. A trust deed securing duly stamped debentures was only liable to a duty of 10*s.*			

46 & 47 Vict. c. 55.

Mortgage—from 25th Aug., 1883, to 31st Dec., 1891.	Duty.
Being a security for money not exceeding £10 (s. 15)	3*d.*

51 Vict. c. 8.

Equitable Mortgages under hand only—from 16th May, 1888, to 31st Dec., 1891.	Duty.
For every £100 and any fractional part of £100 .	1*s.*
And where the amount secured was unlimited in the first instance, and the stamp was available under the Stamp Act, 1870, only for the amount covered thereby, the mortgage was (for the purpose of duty) deemed to be a new and separate security of the date on which any advance in excess of that amount was made (s. 15).	

54 & 55 Vict. c. 39.

Mortgage—from 1st Jan., 1892.	Duty. £	*s.*	*d.*
(1) If under seal, for a definite sum,			
Not exceeding £10	0	0	3
Exceeding £10 and not exceeding £25 . .	0	0	8
,, £25 ,, ,, £50 . .	0	1	3
,, £50 ,, ,, £100 . .	0	2	6
,, £100 ,, ,, £150 . .	0	3	9
,, £150 ,, ,, £200 . .	0	5	0
,, £200 ,, ,, £250 . .	0	6	3
,, £250 ,, ,, £300 . .	0	7	6
,, £300, for every £100 and also for any fractional part of £100 of the amount secured: see *Knights Deep* v. *I. R. Comrs.*, (1900) 1 Q. B. 217	0	2	6
(2) Being a collateral or substituted security under seal, or further assurance (where the primary security is duly stamped: see *City, &c. Brew. Co.* v. *I. R. Comrs.*, (1899) 1 Q. B. 121; *Brit. Oil, &c. Co.* v. *I. R. Comrs.*, (1903) 1 K. B. 689): For every £100, and also for any fractional part of £100 of the amount secured (but since 1st Sept., 1903, not exceeding 10*s.*: 3 Ed. VII. c. 46, s. 7).	0	0	6

54 & 55 Vict. c. 39—*continued.*

Mortgage—from 1st Jan., 1892—*continued.*	Duty.
	£ *s.* *d.*
(3) If an equitable mortgage, under hand only (see s. 86): For every £100 and any fractional part of £100 But an equitable mortgage under seal is charged with the 2*s.* 6*d.* *ad valorem* duty: *United Realization Co.* v. *I. R. Comrs.*, (1899) 1 Q. B. 361.	0 1 0
(4) If for future advances with a limit, the security is charged with the same duty as a security for the amount so limited (s. 88).	
(5) If for future advances of unlimited amount, the security is available for the amount covered by the stamp; but when any advance is made in excess of that amount, the security is (for the purpose of duty) deemed to be a new and separate instrument of that date (s. 88).	
A stock mortgage is charged on the value of the stock (s. 87).	
A further charge is not charged with duty by reason of any further security for the money previously secured (s. 87).	
As to mortgages to Building Societies, see p. 119.	
Debentures not payable to bearer are charged with the 2*s.* 6*d.* *ad valorem* duty; but "bearer" debentures are charged with 1*s.* for every £10, and also for any fractional part of £10 secured. A trust deed securing duly stamped debentures is only liable to a duty of 10*s.*	

Stamps on Transfers of Mortgages.

55 Geo. III. c. 184.

Transfer—from 1st Sept., 1815, to 14th Aug., 1822.	Duty.
(1) If no further advance	35*s.*
Progressive duty	25*s.*
(2) In any other case	Same as a mortgage (including progressive duty).

8 Geo. IV. c. 117.

Transfer from 15th Aug., 1822, to 10th Oct., 1850.	Duty.
(1) If no further advance	35*s*.
Progressive duty	25*s*.
(2) If any further advance, the *ad valorem* duty on mortgages payable under 55 Geo. III. c. 184 was charged, but only in respect of such further advance (see 13 & 14 Vict. c. 97, s. 9).	
Progressive duty	20*s*.
A new covenant for payment and proviso for redemption by the mortgagor did not subject a transfer to any further duty (see 13 & 14 Vict. c. 97, s. 9).	

13 & 14 Vict. c. 97.

Transfer from 11th Oct., 1850, to 4th July, 1865.	Duty.
(1) Where no further advance :—	
If the principal did not exceed £1,400 .	Same as a mortgage.
If the principal exceeded £1,400 . .	35*s*.
(2) Where any further advance . . .	Same as a mortgage for the further advance only.
(3) In any other case	35*s*.
Progressive duty, equal to the *ad valorem* duty if under 10*s*., and in other cases . .	10*s*.
No further duty was charged by reason of any new covenant or proviso for redemption.	
And after 6th Aug., 1861, where the mortgage was part of trust property and the transfer was made upon the appointment of a new trustee, and the remaining trust property was transferred by a separate deed, stamped with 35*s*., the transfer was sufficiently stamped as a duplicate (*i.e.* with 5*s*. and progressive duty of 2*s*. 6*d*., and a denoting stamp), 24 & 25 Vict. c. 91, s. 30.	

28 & 29 Vict. c. 96.

Transfer from 5th July, 1865, to 31st Dec., 1870.	Duty.
For every £100 or any fractional part of £100 of the principal already secured . .	6*d.*
And also For any further advance	Same as a mortgage for the further advance.
Progressive duty, equal to the *ad valorem* duty if under 10*s.*, and in other cases (see 24 & 25 Vict. c. 91, s. 31) . . .	10*s.*
This Act did not take away the privilege conferred by 24 & 25 Vict. c. 91, s. 30 (see last page); *Foley* v. *I. R. Comrs.*, L. R. 3 Ex. 263.	

33 & 34 Vict. c. 97.

Transfer from 1st Jan., 1871, to 31st Dec., 1891.	Duty.
For every £100 and also for any fractional part of £100 of the amount transferred (including, it seems, interest in arrear) .	6*d.*
And also For any further advance	Same as a principal security for the further advance.
No further duty was charged by reason of any new covenant for payment or proviso for redemption (s. 109); *Wale* v. *I. R. Comrs.*, 4 Ex. D. 270; see Conv. Act, 1881, s. 27.	
A transfer for effectuating the appointment of a new trustee was not charged with any higher duty than 10*s.* (s. 78).	

54 & 55 Vict. c. 39. Appendix.

Transfer—from 1st Jan., 1892.	Duty.
For every £100, and also for any fractional part of £100, of 'the amount transferred . . . exclusive of interest which is not in arrear'	6*d.*
And also For any further advance	Same as a principal security for the further advance.
No further duty is charged by reason of any new covenant for payment or proviso for redemption (s. 87): see *Wale* v. *I. R. Comrs.*, 4 Ex. D. 270; though part of debt be paid off: *Humphreys* v. *I. R. Comrs.*, 81 L. T. 199; and see Conv. Act, 1881, s. 27. A transfer for effectuating the appointment of a new trustee is not charged with any higher duty than 10*s.* (s. 62); and since 22nd July, 1902, this section has applied to a transfer for effectuating the retirement of a trustee, 2 Ed. VII. c. 7, s. 9.	

STAMPS ON RECONVEYANCES OF MORTGAGES.

3 Geo. IV. c. 117.

Reconveyance—from 15th Aug., 1822, to 10th Oct., 1850.	Duty.
In any case	35*s.*
Progressive duty	25*s.*

13 & 14 Vict. c. 97.

Reconveyance—from 11th Oct., 1850, to 31st Dec., 1870.	Duty.
(1) Where the total amount of the principal at any time secured did not exceed £1,400	Same as a mortgage for the total amount.
(2) In any other case	35*s.*
Progressive duty equal to the *ad valorem* duty if under 10*s.*, and in other cases .	10*s.*

33 & 34 Vict. c. 97.

Reconveyance—from 1st Jan., 1871, to 31st Dec., 1891.	Duty.
For every £100, and also for any fractional part of £100, of the total amount of 'the money at any time secured'	6*d.*
As to Building Societies' reconveyances, see p. 119.	

54 & 55 Vict. c. 39.

Reconveyance—from 1st Jan., 1892.	Duty.
For every £100, and also for any fractional part of £100, of the total amount of 'the money at any time secured'	6*d.*
An indorsed receipt not operating as a reconveyance is not charged, see *Firth* v. *I. R. Comrs.*, (1904) 2 K. B. 205.	
As to Building Societies' reconveyances, see p. 119.	

STAMPS ON PARTITION DEEDS.

55 Geo. III. c. 184.

Partition—from 1st Sept., 1815, to 31st Dec., 1870.	Duty.
(1) If no money or less than £300 was paid or agreed to be paid for equality . .	35*s.*
(2) If £300 or upwards were paid or agreed to be paid for equality	Same as a conveyance on sale for an equal sum.
Progressive duty—up to 10th Oct., 1850:	
If the deed was liable to the 35*s.* duty .	25*s.*
If liable to a higher duty . . .	20*s.*
Progressive duty—from 11th Oct., 1850 (13 & 14 Vict. c. 97)	10*s.*
Duplicate—up to 10th Oct., 1850 . .	Same as original.
„ —from 11th Oct., 1850 (13 & 14 Vict. c. 97)	5*s.*, & progressive duty of 2*s.* 6*d.* & denoting stamp.

33 & 34 Vict. c. 97. Appendix.

Partition—from 1st Jan., 1871, to 31st Dec., 1891.	Duty.
(1) Where more than £100 was paid or agreed to be paid for equality (s. 94) .	Same as a conveyance on sale for such sum.
(2) In any other case	10*s*.
Duplicate (see s. 93)	5*s*., and denoting stamp.

54 & 55 Vict. c. 39.

Partition—from 1st Jan., 1892.	Duty.
(1) Where more than £100 is paid or agreed to be paid for equality (s. 73). . .	Same as a conveyance on sale for such sum.
(2) In any other case	10*s*.
Duplicate (see s. 72)	5*s*., and denoting stamp.

STAMPS ON RELEASES.

55 Geo. III. c. 184.

Release—from 1st Sept., 1815, to 31st Dec., 1870.	Duty.
If not chargeable as a conveyance on sale or mortgage	35*s*.
Progressive duty—up to 10th Oct., 1850 . . .	25*s*.
— From 11th Oct., 1850 (13 & 14 Vict. c. 97)	10*s*.

33 & 34 Vict. c. 97.

Release—from 1st Jan., 1871, to 31st Dec., 1891.	Duty.
If not chargeable as a conveyance on sale or mortgage	10*s*.

54 & 55 Vict. c. 39.

Release—from 1st Jan., 1892.	Duty.
If not chargeable as a conveyance on sale or mortgage (see *G.N.R.* v. *I. R. Comrs.*, (1899) 2 Q. B. 652)	10*s.*

STAMPS ON SETTLEMENTS.

55 Geo. III. c. 184.

Settlement—from 1st Sept., 1815, to 31st Dec., 1870.	Duty.
Being a conveyance of land without any pecuniary consideration (see *Re Stucley*, L. R. 5 Ex. 85) .	35*s.*
Progressive duty—up to 10th Oct., 1850 . . .	25*s.*
— from 11th Oct., 1850 (13 & 14 Vict. c. 97) .	10*s.*

33 & 34 Vict. c. 97.

Settlement—from 1st Jan., 1871, to 31st Dec., 1891.	Duty.
Being a conveyance of land without any pecuniary consideration (see *Re Stucley*, L. R. 5 Ex. 85) .	10*s.*

54 & 55 Vict. c. 39.

Settlement—from 1st Jan., 1892.	Duty.
Being a conveyance of land without any pecuniary consideration (see *Re Stucley*, L. R. 5 Ex. 85) .	10*s.*

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